

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CELLULAR COMMUNICATIONS)
EQUIPMENT, LLC)
) DOCKET NO. 6:14cv251
-vs-)
) Tyler, Texas
) 8:30 a.m.
APPLE INC., ET AL) September 13, 2016

TRANSCRIPT OF TRIAL
MORNING SESSION
BEFORE THE HONORABLE K. NICOLE MITCHELL,
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

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15 P R O C E E D I N G S

16 (Jury out.)

17 THE COURT: Good morning, everyone. Please be
18 seated.

19 I understand there are some matters we need to take
20 up before we bring in the jury this morning.

21 MR. HOMRIG: Thank you, your Honor. Yes.

22 The first issue are some objections to

23 Dr. Acampora's slides. The first thing I'd like to know,
24 there was a point of agreement on those slides, just to put
25 on the record, that in light of Plaintiff's representation

1 that it is withdrawing contributory infringement, we are
2 dropping three slides related to substantial non-infringing
3 uses.

4 There are some slides, however, about -- some
5 slides and documents related to the provisional application
6 and related to the Ericsson proposal. I can hand up to
7 Your Honor the specific slides.

8 The basic issue here, as I understand it, is
9 whether or not these fall within the scope of his prior
10 disclosures. Dr. Acampora addressed the substance of the
11 Ericsson proposal in his original report on invalidity.

12 Then after expert discovery closed, Mr. Sebire was
13 deposed. And during that time period he testified about the
14 Ericsson proposal, and there was some matching of the -- of
15 the proposal to the provisional application.

16 After that time, the transcript was sealed.
17 Dr. Acampora did not have access to it until NSN allowed him
18 to do so. Once he had access to it, he then, within two
19 weeks, served a supplemental report addressing the substance
20 of that deposition. And so that's sort of the procedural
21 history on this.

22 Now, if we look at the slides, the first two slides
23 in that deck are DDX-4.114 and 115. These are simply
24 reproductions of the marked-up copies of the -- oh, I --
25 actually, I misspoke.

1 So DDX-114 is the marked-up copy of the Ericsson
2 proposal that was used during Mr. Sebire's deposition. So
3 that was marked then, and that's what that is.
4 DDX-115 is a copy of the '820 patent where Dr. Acampora
5 matches up some of the disclosures of the Ericsson proposal
6 into the '820 patent.

7 And -- and the basis for that is that during his --
8 his -- or in his original report he was comparing the
9 Ericsson proposal to the '820 patent generally, and this
10 falls within the substance of his -- his original disclosure
11 even though he didn't make a figure that actually matched
12 them up directly. So that's the background on that as well.

13 The three slides -- well, the Slide DDX-4.121, that
14 is similarly showing the comparison between the Ericsson
15 proposal figures and the '820 patent, and that is something
16 that -- that was addressed in Paragraph 10 of his
17 supplemental report in terms of the Ericsson proposal and the
18 highlighting that was done during the deposition.

19 And then there is basis, for example, back in
20 Paragraph 272 of his original report discussing the Ericsson
21 in comparison with the '820 patent generally and how its
22 disclosure matches up with -- with what's claimed in that
23 patent.

24 The next two slides, Your Honor, are DDX-4.117.
25 That is a comparison of the Ericsson proposal with the '820

1 patent. And in his original report, Dr. Acampora, at
2 Paragraph 145 and 173, discusses the substance of the
3 Ericsson proposal in relation to the '820 patent.

4 And then DDX-4.119 is a similar kind of slide.
5 That -- that discloses the Ericsson proposal and the
6 substance of that in Paragraph 388 of the original invalidity
7 report. And there, he addresses, again, the substance in
8 comparison with the '820 patent.

9 So all of these slides fall within the scope of
10 what he has already opined on in this case, and we submit
11 that -- that we should be permitted to use them.

12 THE COURT: Response.

13 MR. CALDWELL: Good morning, Your Honor.

14 The argument that these were submitted to us timely
15 I think is fairly misleading. I think Mr. Homrig tried to
16 basically correlate it to the timing of the deposition of
17 Mr. Sebire and then some confidentiality issues, but they had
18 the provisional for months and months and months, years.

19 They had what they referred to as the Ericsson
20 proposal for a long time. And as I say, he addressed the
21 Ericsson proposal, as they call it, in his first report. He
22 did none of this in his first report.

23 So he had all of those materials, and the point is
24 to show that there's overlap in the two of them. The
25 timeliness argument that he came back and submitted this, I

1 think basically a month and a half after Mr. Sebire's depo,
2 but perhaps more importantly, almost two months after his own
3 deposition, is -- is, I think, a big timeliness -- timeliness
4 problem.

5 The other thing is more fundamentally in terms of
6 the prejudicial issue in front of the jury, is Mr. Acampora
7 does not offer an opinion on derivation, nonjoinder. He
8 doesn't, you know, plug any of the gaps on derivation or
9 nonjoinder. He doesn't identify someone who's a missing
10 inventor. He doesn't identify anyone from whom material was
11 derived that ended up in a claim.

12 And so what I think is happening is this is an
13 attempt through -- I mean, I will acknowledge that in his
14 late report, well after his deposition, he attached these
15 sort of color things that Apple's lawyers made. I know that
16 he did that.

17 What it sounds like is he's going to come in here
18 and essentially give testimony on these derivation and
19 nonjoinder-type issues. There's a high-level issue, I think,
20 that we need to discuss in the case, and maybe now is not the
21 time. But there's the evidentiary issues for him.

22 And a preview on the high-level issue is they can't
23 prove derivation and nonjoinder. They can't -- you know, I
24 understand everybody makes 50(a) motions to preserve our
25 error going down the road, but the reason we filed our brief

1 with you last night is because this is a preview.

2 At some point today we really want to talk about
3 the derivation and nonjoinder, not merely as a preservation
4 of error sort of thing, but because they literally can't
5 prove it.

6 And I think we must have done a bad job persuading
7 you at the motion in limine hearing; but a point that may or
8 may not have been clear, the Local Rules require that you
9 identify a person from whom something was derived or someone
10 that should be a co-inventor.

11 And that's something they've never done, much less
12 corroborated it. And, okay, so it isn't kept out as a motion
13 in limine, but it has pervaded this trial, and it started
14 with attacks on Mr. Sebire, and it started then -- followed
15 with Magnus Stattin who, on cross-examination, of course,
16 admits there is no person he can attribute this to.

17 And, you know, I'm not trying to argue that point
18 now, but my point is this: This expert can't fill those
19 gaps. He is not a percipient witness on any of the
20 inventorship or derivation issues. He has not offered an
21 opinion as to who the people are that should be plugged in.

22 And it looks like -- because the way that this
23 document has been used throughout, it looks like they are
24 trying to present those defenses with this witness who
25 doesn't have an opinion on them and can't fill those gaps.

1 And I think that's our big concern, particularly
2 with an untimely report. And, you know, just these things
3 coming in later -- consistency with how these have been used.

4 Because what you'll note with these slides is he's
5 not doing the anticipation or obviousness thing, which is
6 where his opinions are. He's not saying -- in these anyway.

7 Maybe he does somewhere else in his 120 slides.
8 He's not saying, okay, these are places where this content is
9 in the claim and it results in an obviousness-type issue.

10 This -- this is more the argument that yeah, okay,
11 I know your guy typed the Ericsson proposal and then he
12 reused those words and -- in the application. It's more on
13 this kind of theft of the invention derivation theme, which
14 is not an issue for Mr. Acampora. And that's why we object.

15 MR. HOMRIG: Your Honor, there's a whole lot in
16 there to address.

17 Let me briefly on the -- on the larger issue of the
18 50(a) motion, let me just say that there is evidence in the
19 record, both from Mr. Sebire and from Dr. Stattin, about who
20 was involved and -- and that can be addressed separately.

21 But Dr. Acampora's role is not to address those
22 issues. Those already have come into evidence.

23 Dr. Acampora's role on this issue is to do,
24 frankly, a very similar exercise to what he's doing on
25 obviousness; and an exercise that has been disclosed to them

1 since he filed his opinions. And that is -- one of the
2 things we need to show is that this subject matter that is
3 relevant to inventorship made its way into the claims and
4 into the patent.

5 He is being asked, or would be asked, not on the
6 broader question of inventorship, but on being able to tie
7 the subject matter into the claims and into the patent.

8 We disclosed that to them. That's consistent with
9 his earlier opinions. There's no broader purpose here other
10 than to meet our burden. And -- and to do it with an expert
11 who is opining on those specific issues.

12 So if the concern is that we're going to somehow
13 try to sneak in a bigger opinion about inventorship or have
14 him opine on that, that's -- that's not the intent. The
15 intent here is to have him tie that subject matter to the
16 claims and to the patent, all of which has been disclosed.
17 They knew about it, and there should be no issue here, Your
18 Honor.

19 THE COURT: Response.

20 MR. CALDWELL: But that's not what these slides do.
21 These slides -- nowhere in anything he showed you -- I mean,
22 understand that, there were 120 some-odd slides, and they had
23 to disclose based on our agreements, I don't know, 60 or 80
24 or some very large number.

25 We're bringing a very few disputes to you because

1 that is -- he just verified my concern. What they want to do
2 is try inventorship with this -- this person who has not
3 offered an opinion that the patent is invalid for failure to
4 name a proper inventor. Or has not said, you know, this
5 claim was derived from somebody.

6 And what this is, is it's -- you know, and I kind
7 of wish we could all go back to the motion in limine stage
8 because this is sort of a classic skunk in the box in that
9 they're saying, oh, text was reused, therefore -- they're --
10 they're painting it as though it's an inventorship argument.

11 And he's saying, ah, it's similar enough to our
12 obviousness argument.

13 This is the problem. That we're not -- the jury
14 isn't being asked to decide whether there's overlap in the
15 specifications. They need to be making their obviousness and
16 anticipation arguments, not something that's similar.

17 We're just asking that the testimony is limited to,
18 you know, what was in his reports and what they have verbally
19 contended. And it seems like they're trying to -- to stretch
20 that because he's not giving us inventorship or derivation
21 invalidity opinion.

22 MR. HOMRIG: And, Your Honor, the ultimate issue
23 of -- of inventorship and derivation is for the jury. What
24 he's being offered on is the technical analysis of how the
25 subject matter is in the claims, all of which has been

1 disclosed.

2 THE COURT: Well, it does sound like he's -- it
3 appears from these slides he's making kind of an inventorship
4 argument, but he hasn't offered any opinions on that.

5 MR. HOMRIG: Well -- well, Your Honor, he is
6 offering technical analysis that is relevant to that
7 decision, and that has been disclosed. It was addressed in
8 his supplemental report where he -- he looks at the Ericsson
9 proposal, the version that was highlighted. He talks about
10 it. That was disclosed to them. He did that shortly after
11 he was allowed to see the deposition transcript himself by
12 NSN.

13 So, yes, it is relevant to the issue of
14 inventorship, but he is not offering opinions on
15 inventorship. He is just doing a technical analysis related
16 to that issue that has been disclosed to them.

17 MR. CALDWELL: Timeliness argument makes no sense.
18 In the deposition of Mr. Sebire testified --

19 THE COURT: Okay. Timeliness aside, tell me
20 about -- respond to that point, that he's doing this
21 technical analysis and it's relevant.

22 MR. CALDWELL: Well, then that's, I think, quite
23 simply -- if what he's saying is that the witness's opinion
24 is on obviousness or anticipation, what he should be doing is
25 taking what they referred to as the Ericsson proposal and

1 then he should be looking at the claims and saying this part
2 of this proposal makes this part of the claim obvious.

3 What he's doing instead is to sort of fill the
4 persuasive gap, he's throwing up these kind of color things
5 to say, oh, he reused it, which I think maybe plays on some
6 sort of confusion or it's an implicit allegation of
7 plagiarism or something, even though he wrote it.

8 That doesn't go to the issue of whether the claimed
9 subject matter is obvious or anticipated, and they should
10 stick to that. That's why we're just objecting to, you know,
11 this series of demonstratives that you don't need if you're
12 not trying to bleed over into this "stole the invention"
13 theme.

14 THE COURT: Are you -- are you taking the position
15 that he's giving, you know, opinions and testimony about
16 anticipation and obviousness and some part of inventorship
17 through this technical comparison? I mean, what -- what is
18 this piece? What is this for?

19 MR. HOMRIG: This portion that they're objecting to
20 goes to inventorship. But it does not go to the ultimate
21 question. It simply goes to show that the technical material
22 that is derived from or comes from those discussions goes to
23 the claims, and that's what he was disclosing.

24 It's -- I think the issue that somehow it takes on
25 a new -- you know, it's all different kind of testimony

1 simply because it's relevant to multiple issues, what the --
2 the question he's addressing is do these parts of the
3 Ericsson proposal find their way into the --
4 subject-matter-wise into the '820 patent. That's it. He's
5 not going to opine on intent. He's not going to opine on who
6 else was involved.

7 He's simply going to look from a technical
8 perspective at the issue of does this subject matter, does
9 that go into -- into the claims and into the patent.

10 THE COURT: Don't you already have that testimony
11 through other witnesses?

12 MR. HOMRIG: We do, but --

13 THE COURT: Why do you need it from this witness?

14 MR. HOMRIG: Well, we need it from this witness for
15 the simple reason that I would expect during closing
16 arguments if we do not have an expert tie the subject matter,
17 we're going to hear from -- from the other side that, well,
18 you know, in the same way they have that -- that either he
19 wasn't willing to do it or we tried to hide it from them or
20 one of these kind of arguments that we've heard so much
21 through trial.

22 And our ability should not be hampered to be able
23 to offer the technical analysis that is relevant to the
24 various defenses that we're presenting. And that's all this
25 is.

1 THE COURT: Final word, Mr. Caldwell.

2 MR. CALDWELL: He just never concludes that there's
3 an inventorship or derivation problem. He just doesn't, and
4 they're trying to wedge that in right now.

5 As I say, I think if they were looking at those
6 references and making an obviousness argument, just here's
7 what's in the claims, are these elements obvious, that's one
8 thing. They're obviously not. They're trying to patch up
9 the inventorship.

10 And from our perspective, I mean, we came into
11 trial with no contention, no expert report identifying anyone
12 who is the alleged co-inventor or anyone from whom a claim
13 was allegedly derived; no one. It wasn't kept out on limine,
14 but the percipient witnesses were up and down. We had --
15 Mr. Sebire come over from Japan, and we had Mr. Stattin came
16 over from Stockholm.

17 At that point the percipient witnesses are gone.
18 They have not plugged that hole. And to have this person go
19 back and repeat something that's already in there, is just
20 unduly prejudicial. It's not disclosed.

21 THE COURT: Okay. I'm going to exclude these
22 slides.

23 What's next?

24 MR. MCMANIS: Good morning, Your Honor.

25 With respect to Defense Exhibits 655 and 656, we

1 discussed these a little bit yesterday at the end of the day
2 with Mr. Bakewell. Apple is now seeking to admit these
3 documents without any witness.

4 They haven't laid the foundation for these
5 documents, and we don't see any reason now that they should
6 be allowed to sort of take the preadmitted exhibit process
7 which involves negotiation between the parties and -- about
8 the evidence that each side expects to come in through
9 witnesses over the course of trial and turn that into a
10 post-admission process where Apple is now, at the end of the
11 trial -- they haven't had a witness to discuss these
12 documents, and now they're trying to slip these in the back
13 door.

14 You know, we think it's inappropriate, and we don't
15 think that there's any basis for these exhibits to come in.

16 THE COURT: What are the exhibits?

17 MR. MCMANIS: The exhibits are agreements between
18 Qualcomm and NSN. They go to the alleged issue of patent
19 exhaustion, which I -- we've discussed a number of times. We
20 don't think it's been properly pled or disclosed in
21 discovery. But I don't think that that necessarily has to
22 govern the issue because at this point there's -- there's no
23 witness here who can testify to these documents.

24 THE COURT: Are these being offered for the bench
25 issues?

1 MR. MCMANIS: I'm sorry?

2 THE COURT: Are these being offered for bench
3 issues?

4 MR. MCMANIS: Yes, Your Honor.

5 THE COURT: Okay. Response.

6 MR. LUMISH: Thank you, Your Honor. Doug Lumish
7 for Apple.

8 The argument you heard yesterday, and I think a
9 shade of it today, was that there's no authentication for
10 these documents. And, in fact, that's not true. There's a
11 declaration that both parties received on September 2nd that
12 authenticates the Qualcomm agreement.

13 We ask to offer it only in the bench trial. That's
14 already been resolved. It's a very important agreement.
15 They know it, in that it -- we believe it will establish an
16 exhaustion problem for them, which is an issue for Your Honor
17 to decide.

18 But we have an agreement -- pardon me --
19 declaration. It was signed on September 2nd by Matthew
20 Dobbins of Qualcomm. It authenticates the agreement. It was
21 provided to both CCE and to Apple on the same day, on
22 September 2nd.

23 We've been subpoenaed, Apple had subpoenaed this
24 document on December 15th. So, you know, we did what we
25 could; but as soon as we got it, they got it.

1 This isn't really that tricky of a question. It's
2 an agreement that's important to an equitable defense. It's
3 authentic. It's authenticated. Their objections aren't
4 well-taken.

5 MR. MCMANIS: Your Honor, they have admitted that
6 their own report on these issues is hearsay and is not going
7 to be admitted in this case. This declaration here is
8 hearsay. There's -- there's no basis to bring these
9 agreements in. They don't have a witness who can cure this
10 hearsay problem, frankly, as --

11 THE COURT: Are you saying the declaration is
12 hearsay or the agreement is hearsay?

13 MR. MCMANIS: Frankly, they're both hearsay, I
14 think.

15 THE COURT: Well, a declaration lays out the
16 business records predicate, from what I could very quickly
17 read through it just now. So you can respond to the
18 substance of that if you would like or take up the issue of
19 the declaration.

20 MR. MCMANIS: Well, Your Honor, I think the issue
21 is -- is less the authentication of the document versus
22 whether there's anyone to explain what this document is
23 about.

24 We have nobody -- we have no witness that they're
25 going to put on the stand to discuss these documents that

1 will give us the opportunity to cross-examine that witness
2 about the contract interpretation or -- or any of the other,
3 you know, factors that went into the negotiation of the
4 agreements or what the agreements actually mean.

5 So, really, this is a prejudicial situation that
6 they have precluded us from being able to cross-examine one
7 on these documents by not calling any witnesses and then
8 trying to admit them at the last minute.

9 MR. LUMISH: So I think he's raising a parol
10 evidence question which has never been raised before. The
11 question here that I thought was at issue is whether the
12 document can come in. Whether it's efficient for Your Honor
13 to construe it, is a next-layer question.

14 And so we have an agreement which is
15 self-authenticating that it's a business record from
16 Qualcomm, and we have a declaration which authenticates it,
17 just because of the complaints that we've heard.

18 Let's recall that they were allowed by the Court to
19 use a declaration from a gentleman named Bao Nguyen to bring
20 in source code in this case. Mr. Nguyen didn't come. Nobody
21 from -- from Qualcomm came to talk about the source code,
22 either; yet, it's in evidence. So their argument is
23 inconsistent with their positions.

24 And long story short, Your Honor, is you can decide
25 whether you think you have enough in the four corners of the

1 agreement to construe it. And if parol evidence were
2 required, that's something they could raise separately or
3 they could say is a defense to the exhaustion question. But
4 on admissibility, none of that really matters.

5 THE COURT: Final word.

6 MR. MCMANIS: Your Honor, documents don't just jump
7 into the record. There has to be a witness from whom this
8 testimony can be admitted. And these documents in
9 particular, which have large swaths of redacted
10 information -- we need -- we need a witness to be able to
11 cross-examine this issue.

12 THE COURT: Okay. Seeing that this is a bench
13 issue and we have a jury coming in in eight minutes, I'd --
14 I'd like to see the exhibit. I'd like to see the
15 declaration. I'll take it up, and I'll give you a ruling on
16 its admissibility.

17 MR. LUMISH: Thank you, Your Honor.

18 THE COURT: What's next?

19 MR. LUMISH: May I hand it up?

20 THE COURT: Yes, please.

21 MR. FINDLAY: Your Honor, the remaining issue, I
22 believe, is that of the Plaintiff's proposed rebuttal case.

23 And in light of the time, if you would like, can I
24 just hand up some cases to you real quickly?

25 THE COURT: Yes.

1 MR. FINDLAY: I think we are in sort of an
2 agreement that these cases are on point. Plaintiffs want to
3 put on not only a validity rebuttal case, which in the
4 general scope of things is appropriate -- we would reserve
5 the right to object to certain issues depending on how they
6 come in or piece of evidence.

7 They also want to present the rebuttal case on
8 infringement and damages, which we think is inappropriate.
9 Those three cases, and particularly the Rodriguez case, I
10 think, if the Court would care to read it, make clear that
11 there has got to be something new that hasn't -- that
12 somehow, if not a surprise, didn't come up adequately in the
13 Plaintiff's case.

14 Rodriguez in particular, on Page 4 of the printout
15 there, basically says: Rebuttal is a term of art and
16 evidence introduced by a Plaintiff to meet new facts brought
17 out in its opponent's case-in-chief.

18 And that -- he turns later in the case on Page 6,
19 goes farther and talks about: The evidence is new if, under
20 the all the facts and circumstances the Court concludes that
21 the evidence was not fairly and adequately presented to the
22 trier of fact before Defendants' case.

23 We have asked them last night in the
24 meet-and-confer, I understand, you know, what is it that's
25 new in the damages case, the infringement case that you don't

1 think you were able to anticipate or respond to. They were
2 silent on that issue.

3 With respect to Mr. Jones, which we believe they
4 want to call up in his infringement case, Mr. Jones isn't
5 even an expert. He just was opining the source code. We
6 don't think there's anything new for him to raise.

7 And I think it's particularly egregious if they're
8 able to call up Mr. Green on damages when you look at the
9 situation where they didn't even really do a substantive
10 cross-examination of Mr. Bakewell, focused on the finance
11 issues, and to now to be able to do that through Mr. Green in
12 rebuttal is, I think, the classic example of sandbagging.

13 And without pointing new evidence that somehow
14 surprised them, or something to that effect, we think to be
15 able to go into this on infringement and damages is very
16 inappropriate.

17 THE COURT: Response.

18 MR. HILL: Thank you, Your Honor.

19 Your Honor, what you're going to find in those
20 cases that were just handed up to you is the unremarkable
21 proposition that under Rule 611 the Court has discretion in
22 controlling the mode and order of presentation of witnesses.
23 That's what you're going to find. There's no hard-and-fast
24 rules.

25 What we all know, Your Honor, from not patent

1 cases, from all cases, you try a personal injury case, you
2 try a civil -- a prisoner civil rights case, the plaintiff
3 gets a rebuttal case if they wish to put it on. There's no
4 hard-and-fast rule that there has to be an affirmative
5 defense and that you can only address an affirmative defense
6 in the context of a rebuttal case. It is a chance to respond
7 to evidence that has come up.

8 And what we saw in this case, Your Honor,
9 particularly with regard -- what makes Mr. Jones relevant, he
10 was an expert witness, by the way, an expert witness on
11 source code -- is we saw Defendants' source code expert
12 disavow his own flowcharts from his report in ways that, you
13 know, demonstrate fundamental flaws in his analysis. We're
14 entitled to put a witness up and to address that, to address
15 validity if we choose, or to address any other issue that's
16 come up in the course of the evidence.

17 It's the normal presentation order of cases. We're
18 not asking to do anything extra. And, frankly, Your Honor,
19 as the Court knows from checking the times, the clock's going
20 to take care of most of this. It's not as if we're going to
21 be able to reopen and put on a whole new rebuttal case -- or
22 a whole new lawsuit.

23 So we would ask that the Court allow us -- frankly,
24 I think it's done in the ordinary course in most cases, being
25 patent or not, the Plaintiff an opportunity to put on a

1 rebuttal case.

2 THE COURT: All right. I'm going to allow
3 Plaintiff to put on its rebuttal case within the given time
4 of the Court.

5 What else can I help you-all with?

6 MR. LUMISH: May I just approach to hand you --

7 THE COURT: Yes.

8 MR. LUMISH: -- the agreement and the declaration,
9 Your Honor?

10 THE COURT: Hand them to Ms. Hardwick.

11 MR. LUMISH: Thank you.

12 I highlighted the reference to the particular
13 document on the declaration for both of you.

14 THE COURT: Thank you.

15 I'll just make one announcement before we get
16 started today, before we recess until 9:00. I've got a
17 Baylor law student observing court today watching you-all at
18 your finest. I know that there are needs to seal the
19 courtroom at times.

20 I would like you to really make a conscious effort
21 to balance that with our need for open court, so that she can
22 watch you as much as possible today. All right?

23 We'll be in recess until 9:00 a.m.

24 COURT SECURITY OFFICER: All rise.

25 (Recess.)

1 (Jury out.)

2 COURT SECURITY OFFICER: All rise.

3 THE COURT: Let's bring in the jury.

4 (Jury in.)

5 THE COURT: Good morning, Ladies and Gentlemen of
6 the Jury.

7 Mr. McManis, let's take up that housekeeping matter
8 before we continue.

9 MR. MCMANIS: Good morning, Your Honor.
10 Plaintiff offers its list of previously-admitted trial
11 exhibits for September 13th.

12 THE COURT: Any objection?

13 MR. SANDFORD: No objection, Your Honor.

14 THE COURT: Okay. Hand that up, please.

15 MR. SANDFORD: Good morning, Your Honor. Brett
16 Sandford for Apple. Apple offers its list of admitted
17 exhibits through September 13th.

18 THE COURT: Okay. Any objection?

19 MR. MCMANIS: No objection, Your Honor.

20 THE COURT: All right. Please hand those up.

21 MR. CURRY: Your Honor, I have had a housekeeping
22 matter as well.

23 Plaintiff marks the Frappier flowchart as PDX-4,
24 and we would offer that into evidence.

25 THE COURT: Any objection to that? Where -- where

1 is that chart?

2 MR. CURRY: I can get you that.

3 It's this chart, Your Honor.

4 THE COURT: Are you offering it for demonstrative
5 purposes?

6 MR. CURRY: Yes.

7 THE COURT: Okay. Any objection?

8 MR. HOMRIG: Your Honor, there is no objection as a
9 demonstrative, but -- but it's certainly not evidence as it
10 certainly stands right now.

11 THE COURT: Okay. It will be admitted for
12 demonstrative purposes only.

13 MR. CURRY: Thank you.

14 THE COURT: What's next?

15 Mr. Homrig, you may continue.

16 MR. HOMRIG: Thank you, your Honor.

17 ANTHONY ACAMPORA, DEFENDANT'S WITNESS, PREVIOUSLY SWORN

18 DIRECT EXAMINATION (CONTINUED)

19 BY MR. HOMRIG:

20 Q. Good morning, Dr. Acampora.

21 A. Good morning, Mr. Homrig.

22 Q. All right. I'd like to kind of pick up where we left
23 off, and then we're going to dive into your analysis, all
24 right?

25 A. Sure.

1 Q. Okay. So the first question I have for you is, focusing
2 on this case, can you estimate about how many hours you've
3 worked on this case?

4 A. Altogether, including time spent here in Tyler over the
5 past couple of weeks, I would estimate between 4- and
6 500 hours.

7 Q. All right. And what is your rate for working -- working
8 on the case?

9 A. \$725 an hour, which is the rate I -- I bill for all
10 matters of this type over the past several years.

11 Q. Okay.

12 MR. HOMRIG: Now, Your Honor, Apple proffers
13 Dr. Acampora as an expert in electrical engineering and
14 cellular technology.

15 THE COURT: Any objection?

16 MR. CALDWELL: No, Your Honor.

17 THE COURT: Thank you.

18 Continue, Mr. Homrig.

19 MR. HOMRIG: Thank you, your Honor.

20 Q. (By Mr. Homrig) All right. So, sir, would you walk us
21 through the roadmap that we're going to go through this
22 morning?

23 A. Sure. I'm going to start with a very brief technical
24 tutorial. I'll talk a little bit more about the '820 patent,
25 which you've already heard a great deal about; a little

1 something about the products that are being accused; and then
2 I'll provide my opinions on noninfringement and my opinions
3 on invalidity.

4 Q. All right. Thank you. Let's dive right in.

5 So, sir, here on the first slide of the tech tutorial,
6 what do you want to illustrate?

7 A. Okay. So what I've laid out here is a basic structure
8 of the radio resources in LTE showing with the uplink. The
9 downlink would look identical.

10 And we've heard much about radio resources and grants.
11 In LTE, the radio resources consist of a so-called time
12 frequency grid. Time is running along the -- the axis, the
13 horizontal axis from left to right. And different radio
14 channels appear in a vertical direction from top to bottom.

15 LTE uses a relatively new technology called orthogonal
16 frequency division multiplex, which is just a word, but it
17 means a bunch of real narrow radio channels are stacked one
18 on top of each other. And resources are allocated both in
19 time and frequency, and I think we have an illustration
20 showing that.

21 So we see here that this one cell phone, based upon
22 grants that's received from the base station, has been told
23 you can send using the uppermost -- the rightmost time slot
24 in the upper two radio channels.

25 Jumping to the left, you can send in this particular

1 time slot; and you can use one, two, three, four, five -- six
2 radio channels.

3 So the grant is sort of being sized to the need. And
4 this is definitely motivated by packet access to the
5 Internet. So you could upload -- you can do more than just
6 place telephone calls. You can upload e-mail. You can
7 request web pages. You can upload photos, things like that.
8 And the downlink looks very similarly.

9 Q. All right. Now, if we move on to the next slide, what
10 are you illustrating here?

11 A. Okay. So this is a representation of what might happen
12 with regard to a single grant. So the user has been given a
13 grant to send in the time slot shown, the first time slot,
14 and five frequency channels from the top. What's inside of
15 that grant.

16 Q. Let's take a look.

17 A. What's inside the grant is a packet. Now, these packets
18 in different standards and different textbooks go by
19 different names. In LTE it's known as a protocol data unit.
20 It's a bunch of bits.

21 And starting from the left, the packet contains a
22 so-called header. Every packet has a header basically
23 describing to the receiver what the receiver might expect as
24 far as the rest of the contents.

25 Next, there are some control elements. And, by the way,

1 these -- all of these fields, the yellow field, the red
2 fields, the blue fields, these are going to be filled by
3 bits, 0's and 1's.

4 And the control elements are an additional type of
5 overhead, again necessary for the network to operate
6 correctly.

7 Finally, we get to the payload. That's the user's data.
8 So the whole idea here is not to send overhead information
9 like headers and control elements but to send user data. The
10 control elements and the header are necessary to accomplish
11 that, but the user doesn't pay for that. The user is paying
12 for the payload to be delivered. So you want these payloads
13 to be big compared to the headers.

14 Finally, at the very tail-end, we've heard about padding
15 bits. That's the padding field shown at the end. As it
16 turns out, this particular grant was larger than the
17 permissible size of payload that the user can place into the
18 grant, leaving some space at the end which the UE would then
19 fill -- would then fill with some dummy bits, so-called
20 padding bits.

21 Now, one of these control elements we've heard a great
22 deal about in this trial, one of these elements is the BSR.

23 Q. All right. Thank you, sir.

24 Now, with that background, let's dive into the '820
25 patent.

1 Sir, on this slide you've listed the priority date. Did
2 you consider the priority date in reaching your conclusions
3 in this case?

4 A. I did. That's the date that we -- the original
5 application was filed. That's the date that I considered
6 when reviewing prior art, what was already public before that
7 date.

8 Q. And then down below, the asserted claims, you see those
9 listed there. Did you -- did you analyze the asserted claims
10 for invalidity and noninfringement purposes?

11 A. I did.

12 Q. All right. And are you going to be offering opinions on
13 those claims today?

14 A. I am.

15 Q. Now, on the next slide you show Claim 1 with some
16 highlighting and underlining. Would you explain to us what
17 you highlighted and underlined and why?

18 A. Okay. So the patent is -- it's focused on determining
19 the size of the BSR that should be sent. So I've highlighted
20 the claim elements and sort of focused on the head aspect of
21 the -- of the patent.

22 So just walking through these real quickly, the first
23 step, the -- the method of this claim, the steps consist of
24 detecting one of a plurality of pre-selected conditions
25 corresponding to the plurality of buffers.

1 So the UE has a bunch of buffers. It has four. There
2 are conditions that can be defined in advance with regard to
3 the status of these four buffers. These are what we call
4 pre-selected conditions. There must be a plurality of them;
5 two or more. And then one of them must be detected.

6 So something happens, sort of like watching the buffers
7 as they fill up. Something happened. Aha. I just detected
8 one of these pre-selected conditions.

9 What happens then? Based upon whichever one was
10 detected, designating takes place. Designating consists of
11 designating one of a plurality of buffer status reporting
12 formats. Among those formats must be a long format and a
13 short format, and the designating must be based upon
14 pre-selected condition detected.

15 And then, finally -- we're not there yet, almost -- the
16 last limitation that I highlighted says: Wherein designating
17 designates the long -- let me pause there for a second.

18 This last limitation would appear to come into play only
19 if the first designating step said: Based upon the
20 preselected condition detected, choose a long.

21 Now we have to check to make sure there's enough space
22 in the PDU to fit in the long. And if there is, if there's
23 sufficient uplink bandwidth and sufficient space in the PDU,
24 send the long. That's it. That's what the claim is
25 basically about.

1 Q. Thank you, sir.

2 Now, in considering the claims that are asserted in this
3 case, are you aware the Court construed some of the terms?

4 A. I am.

5 Q. All right. And here we see the Court's construction of
6 "usage" has plain meaning. Did you apply that meaning?

7 A. I did, yeah.

8 Q. All right. Now, here we see the Court's construction of
9 "uplink bandwidth" as the space available in an uplink grant.
10 Did you apply that analysis?

11 A. I did.

12 Q. And, finally, we see the Court's construction for "the
13 designating unit" where the Court listed the function and the
14 structure. Did you apply that construction, sir?

15 A. I did.

16 Q. All right.

17 A. And we'll talk a little bit more about that later. I --
18 I dislike flashing up slides and not explaining them. We'll
19 come back to that.

20 Q. Yes, we will. Thank you, sir.

21 Now, what -- what conclusions did you reach about the
22 asserted claims?

23 A. Well, two conclusions. The first conclusion, it's my
24 opinion that none of the asserted -- none of the asserted
25 claims are infringed. And it's my opinion that all of the

1 asserted claims are, in fact, invalid.

2 Q. All right, sir. So we're going to cover today the
3 infringement/non-infringement issue first. Before we do
4 that, let's take a quick look at the accused products.

5 Sir, here on DDX-4.28 you're showing an iPad and an
6 iPhone. What -- what are you trying to illustrate here?

7 A. Simply the fact that there are several versions of
8 iPhone that have been accused, several versions of iPad that
9 are accused. And I show the face of two represented devices
10 only to show that there's a lot of functionality inside these
11 phones that have nothing to do with BSRs.

12 Q. All right. Now, on the next slide you've identified
13 some -- some different kind of -- well, you've got some
14 arrows with some names on it. I'll -- I'll let you explain
15 it. What -- what are you trying to show here?

16 A. Okay. So this is attempting to show just the
17 communications capability of the phone. A phone can do a lot
18 of things. It's a computer. It doesn't even need to be
19 connected to a network to do a lot of what you might want to
20 do on a phone. If you want to take photos and never upload,
21 as an example, you don't get to communicate.

22 Showing here only the communication capability, a small
23 portion of the capability, this phone -- all of the accused
24 products can, in fact, communicate using a bunch of different
25 standards.

1 The standards shown on the right pointing toward the
2 cell tower are the cellular standards. It can certainly
3 communicate using LTE. That's a the fourth generation
4 standard setting.

5 The other standards are second generation -- or one
6 version of second generation -- and two versions of third
7 generation.

8 All of this is in the phone. So if the phone should
9 roam into an area where LTE coverage is not available, it
10 will communicate using the different cellular standard.

11 But it doesn't have to use only cellular. The phone
12 also has three versions of WiFi built in. IEEE 802.11 is the
13 standard for WiFi, like home routers, things like -- the type
14 of -- of router that might exist in Starbucks. If you walk
15 in and you want to use the Internet, you can connect to
16 Starbucks' access point.

17 These are the standards that could be used. They're all
18 on the phone. And the phone could also communicate
19 externally by means of Bluetooth.

20 The only thing that's accused here is the LTE uplink.
21 Let me mention, also, there was also the downlink of all of
22 these different standards. None of that has been accused.

23 Q. All right. Thank you for clarifying that.

24 And then on the next slide, we've seen this one before,
25 what -- what are you trying to illustrate here?

1 A. This is the Qualcomm chip. We've heard about that.
2 That Qualcomm chip is what we call the baseband processor or
3 the baseband modem. It's the responsibility of that chip to
4 develop all of the signals that are used for radio
5 communications. And to receive all of the signals -- I say
6 radio -- cellular communications. Let me be clear. The
7 Qualcomm chip implements all of these signals that would be
8 needed to communicate and to receive from the cellular
9 network. There's a lot of functionality on that chip.

10 Q. Now, let's take a look at your opinions on
11 noninfringement. Let's start with regular and periodic BSRs,
12 okay?

13 A. Sure.

14 Q. Now, first I want to ask is, how is it that you
15 developed an understanding of the source code and the
16 functionality of the chip in Apple's products for purposes of
17 evaluating infringement/noninfringement?

18 A. Okay. So I do not personally read source code. I just
19 don't know the language. I don't know C. I never learned
20 that.

21 But I did ask for somebody to be engaged in this matter.
22 That somebody is Mr. Frappier. You heard from him yesterday.
23 I interviewed him. I was convinced that he knew what he was
24 doing. I asked him to read the code relevant to the BSR, the
25 hundred lines of code that we -- that we heard about,

1 relative to the millions of lines that are actually in the
2 Qualcomm chip.

3 I asked him to read the code and provide a written
4 report explaining in English, which I can understand, what's
5 in that code, just provide a translation from C to English.
6 And I based my opinions on that translation.

7 I also spoke to Mr. Frappier along the way so I had some
8 understanding of what he was finding before he actually
9 submitted his report. And then I reviewed his report before
10 I submitted my own report.

11 Q. Now, sir, in addition to Mr. Frappier's analysis, did
12 you consider other materials related to the case?

13 A. I did.

14 Q. All right. Can you just give us a general overview of
15 what you considered?

16 A. Well, I looked at -- well, a couple of things, what
17 Mr. Jones had written. I looked at what Mr. Caloyannides had
18 written. I looked at some Qualcomm documentation. I -- I
19 looked at some deposition testimony. I looked at quite a
20 bit.

21 Q. Okay. Thank you.

22 Now, sir, let's take a look at the claims. And here
23 you've listed the asserted claims. And you've highlighted a
24 couple of the -- the limitations. Would you let us know why
25 you did that?

1 A. Yeah. So for purposes of noninfringement, it's my
2 understanding that to infringe a claim the accused thing must
3 meet every claim limitation, must practice every claim
4 limitation. And I'm going to define -- confine my analysis
5 to two limitations, the detecting and designating
6 limitations, because it's my opinion that those two
7 limitations are not found in the accused products.

8 And those two limitations are reflected in each one of
9 the claims. Claim 1 is not asserted, but Claim 4 is. Claim
10 4 depends from Claim 1. So to infringe Claim 4, all of the
11 limitations of Claim 1 must be found, including the two
12 highlighted ones, and the additional step of Claim 4.
13 Same for Claim 10.

14 So I'm going to show that the detecting and designating
15 steps are not present. Those two steps reflect over into
16 Claims 12, 20, and 24.

17 Q. Now, sir, in general, how is it that you found that
18 those steps are not present for regular and periodic BSRs?

19 A. I went through a fairly rigorous analysis -- and I think
20 we have -- can I have the next slide? I think that might
21 help out.

22 Q. Actually, if I'm not mistaken, I think you told me you
23 wanted to draw a diagram, is that right, of how the -- the
24 steps --

25 A. If I'm allowed to step down, I would love to do that,

1 yeah.

2 MR. HOMRIG: Your Honor, may he step down?

3 THE COURT: That's fine.

4 Dr. Acampora, we're going to put a microphone on
5 you, though.

6 THE WITNESS: Thank you.

7 A. I even brought a pointer. I'm in teaching mode.

8 Q. (By Mr. Homrig) Thank you, sir.

9 A. Okay. Thank you.

10 Q. Here is a pen for you.

11 Now, as I understand it, you wanted to draw a diagram of
12 how the claims operate --

13 A. Yeah.

14 Q. -- relative to the detecting of the -- one of a
15 plurality of pre-selected conditions corresponding to the
16 plurality of buffers and then the next designating step?

17 A. Yeah. So this is going to be as one example. I'm not
18 saying it's the only way the claims can operate.

19 But one -- one way that the claim limitations could be
20 met -- that might be the easiest way for me to explain what's
21 in the claim, what does the claim require.

22 First, the claim requires that there be a plurality of
23 pre-selected conditions associated with the buffers. Let me
24 give an example of plural conditions.

25 Condition one, and we've seen this iPhone used before.

1 The diamond is a condition.

2 And suppose this condition is -- is the following:

3 Count the number of buffers containing data. If that number
4 is equal to 4 -- that's a condition -- if the number is equal
5 to 4, choose a very long format.

6 So here I have the detection of this condition and the
7 designating of a very long BSR based upon having detected
8 that condition.

9 Second condition. Suppose this is not detected, but
10 let's suppose that what is detected is that three of the
11 buffers have data. In that case I'll designate a long BSR.

12 And if this is not designated -- if this is not
13 detected, I should say -- pardon my drawing -- then I'll
14 check the third condition associated with buffers, is the
15 number of buffers with data equal to 2?

16 And if the answer is yes, I'll designate a medium size
17 BSR.

18 And if the answer is no, then I'll check a fourth
19 condition, is the number of BSRs equal to 1?

20 And if the answer is yes, I'll designate a short; and if
21 not, do nothing.

22 So here is an example of four conditions. The claim
23 requires at least two. Here's an example of four. These
24 conditions are associated with the buffers. The claim
25 requires a plurality of buffer status reporting formats.

1 That means more than two.

2 In this example there would be four. The claims require
3 at least a long and a short. Here they are.

4 So as far as these limitations are concerned, this is an
5 example of how the claim limitations would be met, the
6 detecting, one of a set of -- one of a plurality of
7 pre-selected conditions, designating a format based upon what
8 you actually observed.

9 Q. Okay. Now, sir, just for clarity, would you label the
10 drawing that you've done as the '820 patent so we can keep
11 track?

12 A. (Witness complies.)

13 Q. All right. Now, based on your analysis, how does the
14 source code for the accused products work with respect to
15 buffer conditions related to choosing short and long?

16 A. Okay. Well, we heard Mr. Frappier testify yesterday.
17 And as far as designating a BSR format based upon -- I don't
18 have the claim language in front of me -- based upon some
19 observation made on the buffers -- and I'm paraphrasing
20 what's in the claim -- the accused products check only one
21 condition.

22 The condition is the following: Is the number of BSRs
23 greater than one? One condition. If the answer is yes,
24 designate a long; and if not, designate a short.

25 So this is very different than this example of the type

1 of process that would actually infringe these limitations of
2 the '820 patent.

3 And anticipating you're going to ask me to label here --

4 Q. I was.

5 A. This is what is accused.

6 Q. Okay. Now, you said that your drawing of the '820
7 patent claims was -- was an example, but let me ask you this:
8 Understanding the claims, is one required to have multiple
9 buffer-related conditions, one of which could be detected?

10 A. Yes.

11 Q. For the '820 patent?

12 A. That's what the claim says. That the first highlighted
13 limitation says -- and I can't quite read it, but detecting
14 one of a plurality of pre-selected conditions corresponding
15 to the buffers. Plurality means two or more. There have to
16 be at least two conditions.

17 Q. Okay. So, sir, could a product that only checks one,
18 like you've drawn right here, could that ever infringe any of
19 the asserted claims?

20 A. That would not -- that be an example of how -- of a
21 product -- or a process that would not infringe the claim.
22 The claim is very specific. They have to be at least two.
23 The inventor claimed what the inventor claimed. The inventor
24 claims at least two.

25 The accused product only has one. So for this reason

1 alone, this cannot infringe any of the asserted claims.

2 Q. All right. Thank you, sir. You may take your seat back
3 at the witness stand.

4 A. Sure.

5 Q. All right, sir. Now, I know you said you relied on
6 Frappier's analysis. Is this testimony from the trial, from
7 Mr. Frappier, consistent with your analysis?

8 A. Yes. He's reasoned -- he reached the same conclusion
9 that -- that I did.

10 Q. Okay. Well, how about Mr. Chaudhary? Is this portion
11 of his testimony from Lines 27:2 through 27:7, for September
12 12th, is that consistent with your analysis?

13 A. It is.

14 Q. How about Mr. Jones, his testimony from the sealed
15 portions Nos. 3 and 4 at Lines 54:13 to 54:22, is that
16 consistent with your analysis?

17 A. Yes, it is. He was asked specifically the number of
18 non-zero LCGs -- well, there was a series of questions. And
19 at the end of which he concluded: That's correct. It's one
20 channel, the number of non-zero LCG buffers is greater than
21 one. That's like a test, yes.

22 Q. All right. Thank you.

23 And now, did you also consider the LTE standard?

24 A. I did.

25 Q. And how does that relate to your analysis?

1 A. The standard basically says as far as this aspect of BSR
2 size selection, if more than one logical channel group has
3 data available for transmission, report the long BSR, or else
4 report the short -- short BSR. It's -- it's what I drew with
5 regard to the accused product.

6 Q. All right. Now, you've included in your slides this --
7 this photo. Why did you include it here?

8 A. Yeah. I wish I had a better photo. I'm not sure
9 this -- it's sort of like slanted.

10 This is sort of a slice of everyday life. And I use
11 this here to illustrate what's actually in the accused
12 product.

13 Let's suppose you take a child to an amusement park.
14 You approach a ride. It's a dangerous ride. There's a sign
15 up and the sign up is saying -- the sign says: You must be
16 this tall to ride.

17 This is a condition necessary to ride. So if a child
18 fits -- does not fit under the bar, the child could sort of
19 bend down, go under the bar. You're in. You're tall enough
20 to ride. If not, come back next year after you've grown a
21 couple of inches and try again.

22 So it's a simple -- it's a simple test. It's one
23 condition. There's one condition associated with whether you
24 can or cannot enter the ride, are you this tall (indicating),
25 just like in the accused product. It's a single condition.

1 Q. All right, sir. Now, have you ever been to an amusement
2 park with a sign kind of like this?

3 A. Sure.

4 Q. Have you ever seen somebody step up to the line and
5 measure to see if they're taller than it, then back away and
6 step up again to see if they're shorter than it?

7 A. No. I've seen people step up to the line thinking maybe
8 it was wrong the first time and try again, but I never saw
9 somebody go back and say: Am I tall enough? Am I short
10 enough? I've never seen that.

11 Q. All right. So just summarizing your opinions, can the
12 regular and periodic BSRs in the accused products, can they
13 infringe any asserted claim?

14 A. No.

15 Q. All right. Let's turn to padding BSRs.

16 Sir, I see you've highlighted the same steps of the
17 claims related to padding BSRs. What, ultimately, did you
18 find?

19 A. The padding BSRs cannot meet these two claim
20 limitations.

21 Q. All right. And we're going to -- we're going to dive
22 into -- into why.

23 MR. HOMRIG: Your Honor, may we seal the courtroom
24 briefly, please?

25 THE COURT: Yes.

1 Ladies and Gentlemen, we're going to seal the
2 courtroom at this time. If you are not covered under the
3 protective order, I'll need you to leave. We'll let you know
4 when you can come back into court.

5 MR. HOMRIG: Thank you, your Honor.

6 (Courtroom sealed.)

7 (This portion of the transcript is sealed and filed
8 under separate cover as Sealed Portion No. 16.)

9 (Courtroom unsealed.)

10 Q. (By Mr. Homrig) All right, sir. So would you remind us,
11 please, what your conclusion is about the asserted claims
12 relative to validity/invalidity?

13 A. It's my opinion that the asserted claims -- all of the
14 asserted claims are, in fact, invalid.

15 Q. Okay. So, sir, did you consider obviousness in your
16 analysis?

17 A. I did.

18 Q. And what was your conclusion?

19 A. My conclusion is that the asserted claims are invalid
20 because they were obvious.

21 Q. All right. I didn't mean to cut you off. Please go
22 ahead.

23 A. Okay. A person of skill in the art, knowing what's in
24 the prior art, would have known that comparing the teachings
25 of the prior art against the claims of the patent would have

1 recognized this is obvious. Based upon this body of
2 knowledge that's out there, we would have known how to do
3 this here.

4 Q. All right. Now, I'm going to walk through that analysis
5 with the jury today.

6 Let me ask you first, did you consider the level of
7 skill that one having ordinary skill in the art would have
8 had at the relevant time period?

9 A. Yeah. So as far as obviousness is concerned, it's not
10 just obvious to anybody but obvious to this so-called person
11 of ordinary skill in the art at the time of the invention.

12 So based upon my reading of the patent and my
13 understanding of what's taught there, I believe that such a
14 person would have had a bachelor's degree in either computer
15 science or electrical or computer engineering and two years
16 of technical experience in -- in the design or implementation
17 of communication networks, not even wireless networks, just
18 communication networks.

19 This notion of BSRs -- this is -- this is the notifying
20 the central controller if you get an allocation also occurs
21 in wire online networks. This is not unique to cellular or
22 wireless.

23 Q. Okay. Now, is that the understanding that you applied
24 in conducting your obviousness analysis?

25 A. It is.

1 Q. Now, did you consider what Dr. Caloyannides said about
2 level of skill in the art?

3 A. His "person of ordinary skill" was defined a little bit
4 differently, but nonetheless, even if I adopted his
5 definition of "a person of ordinary skill," I would have come
6 to the same conclusion.

7 Q. All right. Now, sir, did you consider what the prior
8 art teaches generally?

9 A. Yes.

10 Q. Okay. What -- what did you find?

11 A. Well, what I found were -- I actually found a lot of
12 things, but I'm going to describe my analysis of only one set
13 of things in the interest of time.

14 I also need to apologize in advance. My understanding
15 is that to show invalidity, I need to show that each and
16 every element of the asserted claims is found in the prior
17 art. So this is going -- this is going to be somewhat
18 tedious, and I apologize in advance.

19 Q. All right, sir. I -- and actually, I'm going to ask
20 Mr. Schmoller to start setting up some demonstratives that
21 we're going to use during that analysis. But while he does
22 that --

23 MR. HOMRIG: And thank you, sir.

24 Q. (By Mr. Homrig) While he does that, let's move to this
25 picture here.

1 Why did you include this in your presentation?

2 A. Okay. Another slice-of-life example of what this patent
3 is about. And, again, it's really very simple. Let's
4 suppose you're going on a trip and you're going -- the first
5 thing you ask yourself is, am I going on a short trip? You
6 have to choose the size of luggage you want to take. So am I
7 going on a one -- on an overnight trip? If the answer is
8 yes, maybe I'll take a short -- a small bag.

9 On the other hand, let me -- let me see -- maybe I'm
10 going on a two-week trip. If I'm going on a two-week trip,
11 then I'd want to take a larger bag. So I look at my calendar
12 and I see, okay, I'm going on the long trip. Let me take the
13 large bag. I have a lot of -- a lot of clothing to take with
14 me.

15 Then I realize when -- when I go outside, oh, I'm going
16 with my friend. He's driving. So he pulls up in his car,
17 opens the trunk, and there's stuff in it.

18 And I think, hmm, can I fit in my big bag? In this case
19 this fellow -- I think -- I think he's breathing a sigh of
20 relief. It looks like it's going to fit.

21 So based upon the fact he's taking a long trip, he
22 decided to take a big bag. Then he checked to see if there's
23 enough space to put the big bag in the trunk. And there was.

24 That's -- that's Claim 1.

25 Q. All right, sir. Now -- thanks for that explanation.

1 Let me ask you, do you remember this demonstrative from
2 trial during Mr. Sebire's testimony?

3 A. I do.

4 Q. Why did you include it in this -- in this testimony?

5 A. Well, I thought it was kind of interesting. Mr. Sebire
6 admitted that with regard to the flowchart -- now, the
7 flowchart is not the claim. It's just the flowchart. But
8 with regard to the parts of this flowchart, Mr. Sebire's
9 testimony was that none of this was his idea. None of these
10 boxes and diamonds, none of these were his.

11 There was some ambiguity as far as what's heading off to
12 the -- to the left where the X is, but that -- that is not
13 reflected in any of the accused claims. The rest of it is.

14 And he admitted he didn't come up with any of it.

15 Q. All right. Now let's turn to the next slide.

16 What are you showing here?

17 A. These are the three pieces of prior art that I'm going
18 to analyze.

19 Q. All right. Let's -- let's take a look at them. So
20 let's start with the Ericsson joint proposal.

21 What are you illustrating here on this slide about the
22 source of this proposal?

23 A. These are the contributors to the proposal: Ericsson,
24 Nokia, NSN, NTT DoCoMo, Qualcomm Europe, Samsung. A pretty
25 broad cross-section of -- of the players in the telecom

1 industry in terms of what they represent.

2 Ericsson and NSN being equipment makers, not the only
3 equipment makers. Nokia and Samsung being cell phone makers,
4 not the only. NTT DoCoMo. NTT is a large cellular -- NTT
5 DoCoMo is a large cellular operator in Japan.

6 So all of the major players -- all of the major piece
7 pods, I should say, not players -- major piece pods of
8 cellular systems contributed to this proposal.

9 Q. Now, the next slide you called out from DTX-525, Page 1,
10 this date and some other information. Why did you do that?

11 A. We've heard this before. This is the date that
12 Mr. Sebire uploaded the Ericsson proposal, Ericsson joint
13 proposal, onto the RAN website, the 3GPP website.

14 So he posted this so that all of the others -- all of
15 the other participants would see this here. But when he did
16 that, so could the public. This is not a private server.
17 Anyone could look at this. So on October 30th this was made
18 public, the Ericsson proposal was made public.

19 Q. Now, the next slide, you call out from the Ericsson
20 proposal some dates. What are you showing here?

21 A. These are the dates where the proposal -- well, on at
22 least one of these dates this proposal was discussed at a
23 particular meeting of -- a particular 3GPP meeting.

24 Q. All right. Now, if we go dive into the substance of the
25 Ericsson proposal, we see this bit about scheduling

1 information, also from Page 1. What are you showing here?

2 A. Yeah. This is basically saying this -- this in general
3 is what the proposal is about. So just looking at the
4 highlighting, it's speaking about scheduling information,
5 buffer status reporting, and relative to HSUPA -- I'm sorry,
6 it's in the fourth line not highlighted -- right -- right
7 beneath that line, we see the HSUPA, that's a 3G standard.

8 And, apparently, the objective here was to do something
9 that was sort of generally similar to what's done in 3G, but
10 maybe provide a little bit more flexibility. That's what
11 this proposal was trying to do, extend 3G with a little bit
12 more flexibility.

13 Q. Okay. Now, if we go to the next slide, we see another
14 call-out from Page 1 of the Ericsson proposal. And you've
15 highlighted a couple of things.

16 Let me ask you about that first one where it says: A
17 priority class is defined by grouping radio bearers.

18 Why did you include that?

19 A. Okay. So each radio bearer group has a different
20 priority associated with it. A group of -- remember, a radio
21 bearer is a channel. What's being proposed here is that
22 channels with similar needs be grouped together and be
23 identified by one priority.

24 And second highlighting, what's being proposed is that
25 there be four such groups.

1 Q. And then on the next slide you call out some information
2 also from Page 1 about the buffer size. Do you see that?

3 A. I do.

4 Q. Can you illustrate for us why you think that's
5 significant?

6 A. Yeah. So what's being considered here is how many bits
7 should be included in the buffer status field to indicate how
8 much data is in the corresponding buffer. And consideration
9 is being given to using 6 bits or 14 bits.

10 So I'll short-circuit some of this. If we look at the
11 fourth line not highlighted, but the first sentence: 6 bit
12 buffer size gives 64 code points.

13 And it gives a certain percentage.

14 And it goes on to read: This is comparable to 32 points
15 and approximately 24 percent step size of HSUPA.

16 That granularity is basically saying 6 bits would be a
17 little bit better than what we had in HSUPA. 14 bits would
18 have been a whole lot better, and I guess it was deemed to be
19 overkill. So the proposal was, let's use a 6 bit buffer size
20 field.

21 Q. Then on the next slide you call out some figures, 1 and
22 2 from the Ericsson proposal, Page 2. What are you showing
23 here?

24 A. These are the formats proposed for the two buffer sizes,
25 one short, one long.

1 Q. All right. So now that we've discussed the Ericsson
2 proposal, let's look at the Lee application.

3 A. Uh-huh.

4 Q. So on the next slide you call out the inventors. Why
5 did you do that?

6 A. Just to identify who the inventors are of this -- this
7 was a foreign patent application, but these are the
8 inventors.

9 Q. All right. And the next page you've got -- or the next
10 slide you show us the date May 18, 2006?

11 A. Yeah.

12 Q. Why is that?

13 A. May 18, 2006 is the date this application was made
14 public.

15 Q. Okay. Now, the next slide you've got some call-outs
16 from Page 22 of the Lee application. Why did you include
17 these?

18 A. Just to indicate that this is also about reporting
19 buffer status information. And this -- the Lee patent is
20 proposing two kinds of mechanisms, a so-called absolute
21 buffer status report and a relative buffer status report.

22 And as their names would suggest, absolute buffer status
23 report, tell me the entire contents of the buffer. Relative
24 buffer status report, tell me how much new data has arrived
25 since the last report. So one would be long; one would be

1 short.

2 Q. All right. Now, this next call-out from Page 23 of the
3 application, does that relate to the relative buffer status
4 reports that you were just discussing?

5 A. Yeah. That's based -- this is basically from the patent
6 itself saying different words, what I just said, the number
7 of bits associated to relative buffer status report is small.

8 Q. All right. So now let's turn to the Alcatel proposal.

9 So, sir, here on this slide you called out the date
10 1 November, 2006. And this is from DTX-522, Pages 1 and 2?

11 A. Yes.

12 Q. Why is that significant?

13 A. This is the date that this proposal was uploaded to the
14 3GPP website. This proposal was being made to the same
15 working group that the Ericsson proposal was made to but
16 approximately a year earlier.

17 Q. All right. Now, on the next slide you show a date here,
18 6 through 10 November, 2006. Why did you include that?

19 A. That's -- somewhere in that time frame is when the
20 proposal was actually made to the working group.

21 Q. All right. And here on the next slide from the Alcatel
22 proposal you have a call-out about buffer reporting schemes.

23 Do you see that?

24 A. I do.

25 Q. Why did you include this?

1 A. This also was in exactly the same -- dealing with the
2 same subject matter, reporting buffer status, and in the
3 uplink, and declaring that it should be flexible.

4 Q. Now, if we go to the next slide we see a pretty good
5 amount of highlighting, so let's step through it. Let's
6 start with the -- with the top highlighting reporting to --
7 referring to buffer reporting criteria. Do you see that?

8 A. Yeah.

9 Q. What -- what were you trying to show here with this
10 call-out from --

11 A. Okay.

12 Q. -- from DTX-605, Page 1?

13 A. Okay. So this is -- again, I'll try to short-circuit
14 this. The buffer status reporting criteria is based on
15 either per radio bearer -- so before doing any groupings
16 we're going to report on each and every channel -- or on
17 groups of radio bearers. So let's do the grouping. We don't
18 have to report every channel, report just on groups of
19 channels.

20 Q. All right. And then if you move down to the -- to the
21 next call-out, what's significant there?

22 A. Okay. So this is basically describing the formats that
23 would be used. And it uses so-called bitmap format. I can
24 try to explain this very simply. Bitmap is well -- is
25 well-known in the field.

1 When you go to present a list of items -- in this case
2 the amount of data in various buffers -- a bitmap can be used
3 to indicate in this case which buffer groups are being
4 reported.

5 So there are four buffer groups. The bitmap reads as
6 follows: If I find a 1 in bit position No. 1 -- can I write
7 with this -- if I find a 1 in bit position No. 1, that tells
8 me I'm going to report on the first buffer group. And sure
9 enough, that's where it is.

10 A 0 means no report on buffer Group 2. Position 2,
11 don't expect to find a report in buffer Group 2.

12 But, on the other hand, in -- in Position 3, bit
13 position 3, I find another 1; and sure enough, there's a
14 report in the third group.

15 And you see with this heading, there's no report on the
16 fourth group.

17 So if there was one buffer and only one buffer that was
18 being reported, a 1 would be in one of these 4-bit positions,
19 and it would be one report.

20 If any two were being reported, there would be two 1's
21 somewhere within these first 4 bits and two buffers reported.
22 Similarly for three. Similarly for four. So this is
23 basically describing four different formats.

24 Q. All right. Thank you.

25 Now, when we get to the next slide --

1 MR. HOMRIG: And, Mr. Lee, would you kindly help
2 set up the charts we would like to walk through?

3 Thank you.

4 Q. (By Mr. Homrig) All right. So while they're doing that,
5 let's turn to your analysis.

6 So here you've grouped a number of limitations from the
7 claims, the monitoring, detecting, and designating depending
8 on pre-selected condition. And then you've called out some
9 material from Ericsson. Would you share with us why you've
10 grouped that all together?

11 A. Yes. So what I'm going to do from this one chart is
12 illustrate where in the Ericsson proposal these three
13 limitations can be found. So this is just shorthand. You
14 could read from the claims themselves, which are up on these
15 boards, what the full limitations -- I'm shorthanding this.

16 I'm going to call these the monitoring, detecting, and
17 designating limitations. The first three limitations --
18 well, yeah, the first three limitations of the claim.

19 Q. All right. Now, below that you've got the figures for
20 the short BSR type and the long BSR type in the Ericsson
21 proposal. What -- what's the significance of that and the
22 other disclosures you've included here for these limitations?

23 A. Yeah. So the second pullout is telling us that it's not
24 necessary to report -- to always report four radio bearer
25 groups. I tried to clean up the English a little bit. It's

1 not necessary to always report four radio bearer groups.

2 And the example that was given is if there's only a
3 limited number of bearers configured. But that would suggest
4 to a person of skill -- in fact, this was actually testified
5 to by Mr. Stattin. This also means report the number of
6 radio bearer groups that actually have data.

7 So this is literally saying as an example, if only two
8 radio bearer groups are even configured, you never have to
9 report on Groups 3 and 4. But this could also mean simply
10 report on the number that actually have data.

11 And the proposal is to use two formats, one with only
12 radio bearer group to be reported and one with all four to be
13 reported. And, once again, we see the formats of the long
14 and short.

15 Q. All right, sir. So -- so let me -- let me ask you now
16 about the next slide you have here. You've got some
17 call-outs from Lee for the same limitations. Why did you
18 include these?

19 A. Okay. So Lee is telling us here there are -- just like
20 the Ericsson proposal told us that there were different
21 pre-selected conditions that would be used to select the long
22 or a short, Lee is doing the same thing. The one on the left
23 is saying that the UE sends a relative buffer status
24 report -- or would send a relative buffer status report each
25 time a predetermined reference is made.

1 The right one is saying almost the same thing except for
2 an absolute buffer status report. The absolute buffer status
3 report is transmitted each time a prescribed reference is
4 met. Prescribed, predetermined, same thing.

5 Now, these have to be different references. If they
6 were the same, there would be no way to distinguish between a
7 relative and an absolute. So this is a clear disclosure of
8 two criteria, each of which corresponds to one report format,
9 a long or a short.

10 Q. All right, sir. Now, is it your understanding that the
11 monitoring, detecting, or designating, that those limitations
12 are parts of all of the asserted claims in this case?

13 A. They are. We can see the same language used in every
14 asserted claim.

15 Q. All right. So for the Lee application, is it your
16 opinion that material from the Lee application discloses
17 elements of each and every asserted claim?

18 A. Yes.

19 Q. Now, let me back up and ask you about Ericsson.

20 Is that the same, sir? Is it your opinion that the
21 Ericsson proposal discloses elements of each and every
22 asserted claim?

23 A. Yes. The first three elements for both cases.

24 Q. Okay. Let's go ahead and move on.

25 Let me ask you, though, sir, while we do that, am I in a

1 position to -- to check off the monitoring, detecting, and
2 designating elements of all of the claims?

3 A. Yes.

4 Q. Okay. So let me ask you about the communicating and
5 designating when there is sufficient uplink bandwidth
6 limitations. Here you've called out some material from the
7 Ericsson proposal.

8 A. Yes.

9 Q. And my question to you, sir, is: Does the Ericsson
10 proposal relate to these limitations?

11 A. Yes. So let's look at the communicating limitation
12 first.

13 Again, there are two limitations on this slide.

14 Communicate. In Proposal 5 you see the BSR reports
15 something. Who is the report made to? The report is made to
16 the eNodeB. We see that in the third -- the second line of
17 the third pullout. ENodeB is the base station. So clearly,
18 the BSR is being reported as being communicated.

19 Communication limitation is present.

20 Now, when there's sufficient uplink bandwidth. Look at
21 the last highlighted sentence and the underlined portion of
22 that, which is almost the whole thing: The number of radio
23 bearer groups to report should not be too small to provide
24 enough information to the scheduler but cannot be too large
25 either to limit the overhead.

1 It's like a Goldilocks, not too hot, not too cold. So
2 this is telling us you don't want to send something that's
3 too small because you may not send enough information.

4 Conclusion. If you have space available to designate
5 the long, use the long. Why waste the space? So this is
6 suggesting, to a person of skill in the art, that the
7 designating the sufficient uplink bandwidth limitation is
8 disclosed.

9 Q. All right, sir. So, is it your opinion that the
10 Ericsson proposal discloses material in the communicating and
11 designating when there is a sufficient uplink bandwidth of
12 each and every limitation of each and every claim?

13 A. Yes, sir.

14 Q. Okay. Let's move on to the Alcatel proposal for the
15 same steps. And why did you include this here?

16 A. Okay. So, once again, what these two pullouts are
17 disclosing are the two limitations that we just considered,
18 the communicating step and the designating step.

19 Designating there is sufficient uplink bandwidth.
20 Remember, there were two designating steps, one based upon
21 pre-selected conditions associated with the buffers, a second
22 associated with there being sufficient uplink bandwidth.

23 We're talking about the second here.

24 So the report method can reduce overhead and improve
25 uplink throughput. So it is clear that the BSR is going to

1 be communicated if it is going to reduce the overhead and
2 improve uplink throughput. The base station is the one that
3 is controlling the uplink throughput. The base station has
4 to be made aware of the BSR. That BSR has to be communicated
5 from the UE back to the base station.

6 But the proposal goes on. If possible, whenever there
7 is padding space in the MAC PDU, part of the buffer status
8 can be inserted in this MAC PDU. And it goes on in the
9 second pullout, leveraging the MAC PDU padding bits to report
10 buffer status, which reduces overhead.

11 So once again this is suggesting use the padding field
12 to send the BSR. If you haven't got enough space, send only
13 part. If you have got enough space, it would be understood,
14 don't waste it. Send a long BSR. So that limitation -- the
15 second designating limitation is disclosed as well.

16 Q. In the Alcatel proposal?

17 A. Yes.

18 Q. All right, sir. Now, so is it your opinion that one of
19 skill in the art at the relevant time would have thought the
20 communicating and designating when there is sufficient uplink
21 bandwidth limitations, would have been obvious?

22 A. Yes, sir.

23 Q. Okay. So, am I free to check off those boxes?

24 A. Yes.

25 Q. Are we finished?

1 A. No. I'm sorry. We're not finished. I have to talk
2 about every one of the limitations.

3 Q. All right, sir. Let's do just that. So on -- excuse
4 me. I clicked the wrong button. All right. So there we
5 are.

6 So this is Claim 4, and here you've called out -- again,
7 we see the figures and some other material from the Ericsson
8 proposal.

9 Would you describe for us why you included that on this
10 slide?

11 A. Yeah. This one is fairly straightforward. The claim
12 limitation requires that there be a short format
13 corresponding to a single radio bearer group, long
14 corresponding to multiple radio bearer groups.

15 This proposal that is shown on Figure 1, reporting on
16 one bearer group, that is a short. Reporting on both, that's
17 a multiple for the long BSR. So this limitation is present.

18 Q. All right. And, so, is it your opinion, sir, that the
19 Ericsson proposal discloses the material set forth in Claim
20 4?

21 A. It does, sir.

22 Q. Okay. Am I free to check off that box now, sir?

23 A. Please do.

24 Q. All right. So let me ask you this, though: Does -- on
25 this slide from the Ericsson proposal, you've also identified

1 some callouts from priority class and four radio bearer
2 groups. Does this disclosure in the Ericsson proposal, is
3 this also relevant to Claim 4?

4 A. This is relevant to Claim 4 and also relevant to Claim
5 10.

6 Q. All right. We're going to get to Claim 10 in -- right
7 now.

8 A. Okay.

9 Q. All right. So here is another report -- or another
10 portion of the Ericsson proposal that you've called out for
11 Claim 10.

12 Would you describe for us why you've included it here?

13 A. Okay. So Claim 10 says selecting a buffer status report
14 of a radio bearer group of highest priority. So to get to
15 Claim 10, somehow the highest priority has to be reported.

16 Now, we've already seen that a long BSR can be reported.
17 There were four priority classes -- one, two, three, four.

18 If a long is reported, by definition the highest
19 priority has been reported. It was one of those four.

20 Now, suppose only one radio bearer group is being
21 reported. Well, that would mean there was only one with
22 data. That would then also, by definition, be the one of
23 highest priority. It is the only one with data. The others
24 have no data. So the limitation -- claim limitation 10 is
25 present as well.

1 Q. All right. Now, let's go to the next slide, which
2 groups a number of limitations like apparatus and processor
3 and some others and then calls out some information from
4 Page 2 of the Ericsson proposal.

5 Would you describe to us why you included this
6 information on this slide?

7 A. Okay. So Claim 12 is an apparatus claim. The apparatus
8 comprised a processor and memory with computer program code,
9 basically programmed to perform a bunch of steps. We already
10 spoke about the steps, so the good news is we're not going to
11 talk about those again.

12 What about the processor and memory? At the time that
13 this proposal was made, every UE had a processor -- had a
14 computer in it. A computer is a processor, memory, and a
15 program running in the memory providing instructions to the
16 processor.

17 We see here data is buffered in the UE. That tells me
18 that the memory, including computer program -- programmed to
19 perform the following steps is disclosed in this patent -- is
20 disclosed in this proposal. It's in the UE. The UE is
21 the -- includes the claimed apparatus.

22 Q. All right. Now, how about the nontransitory computer
23 readable medium for Claim 24? Would you address that, sir?

24 A. Yeah. So it's a lot of words. Nontransitory computer
25 readable medium. There are two types of memory, so-called

1 volatile memory -- if you pull the plug, the contents are
2 gone. Nonvolatile memory like a hard drive, if you pull the
3 plug, the memory remains.

4 So this is saying put the instructions to do these
5 steps, which we've already spoken about, on nontransitory
6 medium. Put it in nonvolatile memory. And the UE in the
7 Ericsson proposal would be understood to have the nonvolatile
8 memory because if it didn't, every time it lost power -- the
9 battery ran out, if you didn't keep it fully charged -- you
10 would have to run back to the store and have it reprogrammed.

11 So almost every computer operates that way. There is a
12 hard drive storing the software when a computer is turned
13 off. When you power up the computer, portions of that memory
14 are put into volatile memory which runs must faster, and that
15 is the memory that actually feeds the instructions to the
16 CPU, to the processor. So all computers operate that way.

17 Q. All right. And is it your view that the Ericsson
18 proposal discloses that limitation?

19 A. Yes.

20 Q. Now let's talk about designating unit. We're going to
21 look at the Court's construction in just a moment. But let
22 me ask you first, sir, did you find that the Ericsson
23 proposal disclosed the designating unit as part of the
24 claims?

25 A. I did.

1 Q. All right. So, here, sir, if you would, would you
2 explain sort of your application of the function and
3 structure identified by the Court?

4 A. So this is a type of claim limitation. It is known as a
5 means-plus-function limitation. And the Court has told us
6 that the claimed designating unit, (a) must perform the
7 function that is shown on your screen; and (b) the structure
8 that performs that function must be what's -- must be as
9 defined.

10 And the Court was very specific. It's got to be shown
11 from the patent, units 240 and 260, implemented in hardware
12 or software performing one or more of a bunch of algorithms.

13 So we know the function; we know the structure.

14 Q. All right. And then on the next slide we see some of
15 the figures referred to by that construction.

16 A. Yes. So Figure 2 contains the units 240 and 260, that I
17 just mentioned. They are simply boxes. They, basically,
18 describe what they do. There is no detail about what's
19 inside the box.

20 They are inside the UE. And what the UE does -- one of
21 the things that the Court identified was the uplink capacity
22 designating unit cooperating with the designating unit 260 to
23 determine the appropriate buffer status report. We walked
24 through this here already.

25 The format designating unit and the uplink capacity

1 detecting unit is basically saying check how much space is
2 available; and working with the format designating unit, use
3 the appropriate size BSR. So this is all in the UE. That
4 limitation is present.

5 Q. All right. Now, sir, let me last turn to Claim 20.

6 Here you've called out some -- again, some information
7 from the Ericsson proposal. Is it your view that the
8 Ericsson proposal discloses the elements in Claim 20?

9 A. Yes, it does. The claim requires a long buffer status
10 reporting format. Here's the long buffer status reporting
11 format exactly from the Ericsson proposal.

12 Q. Okay. Now, sir, considering all of the evidence that
13 you've walked through with this jury just now, is it your
14 view that each and every element of each and every claim
15 that's asserted against Apple in this case is obvious?

16 A. Yes.

17 Q. Now, one of the things I wanted to ask you about is
18 whether you considered whether those claims incorporate sort
19 of general or generic concepts known to those skilled in the
20 art back at the relevant time.

21 A. Okay. All of them are. As I explained to you, these --
22 these are well-known concepts. They're relatively simple
23 concepts. I even gave the example of the guy trying to shove
24 the luggage into the car. This is -- there's not too much
25 involved here.

1 Q. Okay. Now, here I see you've called out some more from
2 the Ericsson proposal, Page 1. Why did you include this?

3 A. Yeah. So it's saying that the Ericsson proposal is --

4 MR. CALDWELL: Your Honor, I object --

5 A. -- all on the same --

6 THE COURT: Hold on a second.

7 MR. CALDWELL: I'm sorry. I object to the X that
8 Mr. Homrig just ran up and threw on. Can we approach the
9 bench?

10 THE COURT: Yes.

11 (Bench conference.)

12 MR. CALDWELL: There was no question about -- about
13 which he just ran up and threw an X on the board on
14 designating unit. And, in fact, when they were just in
15 designating unit they were pointing to the Court's
16 means-plus-function structure in our patent. And this is a
17 point of contention. There was the Daubert on it before.

18 He didn't identify that structure in the
19 references, much less just show it. And so they've kind of
20 moved on to a different topic, and Mr. Homrig ran up and
21 checked the board. And we object to that.

22 MR. HOMRIG: So I actually asked him about it
23 before I went to the Court's construction. He said it was
24 there. He identified the UE. He said it twice. I'm happy
25 to go back and ask him again; but, Your Honor, he's already

1 given that opinion in this court now twice.

2 MR. CALDWELL: Well, then what he's trying to do is
3 go outside the scope of his report. It's not in his report
4 where he -- he identifies structure meeting the Court's
5 construction. I don't -- I don't agree that that's what's
6 happened.

7 I mean, if -- if he asked a leading question that
8 says, oh, did you find this stuff, and then they went to
9 start proving it, and they said the Court's construction
10 requires this structure, they never did the next step, which
11 is give me -- give me the opinion where -- where that
12 structure is identified. Because it's always been our point
13 that's the part he never put in his report.

14 MR. NELSON: And, Your Honor, if I may just add to
15 that. They're trying to equate uplink bandwidth detecting
16 unit in the form of designating unit as the UE. In his
17 report he didn't even identify the UE as that.

18 They're just basically trying to say, oh, this is
19 in there somewhere. And that's not what he did in his
20 report. He never identified the structure in any prior art
21 reference. They just walked right past it and put an X on
22 the box.

23 MR. HOMRIG: Your Honor, that's -- that's not what
24 happened. I'm happy to ask him again if he --

25 THE COURT: Ask him again. You can handle it on

1 cross.

2 MR. CALDWELL: Okay. But what if it's not in his
3 report? I mean, that's why -- I mean, I don't want to
4 obviously run up here a lot, but I'm wondering what do we do
5 because that's our contention that it's not in his report.

6 So the question that he's about to go ask -- I
7 mean, I don't want to just stand up and make an
8 outside-the-scope objection. And so I'm wondering how it's
9 best to handle that with Your Honor.

10 THE COURT: Is it in his report?

11 MR. HOMRIG: I believe it is, Your Honor. And what
12 I'm asking him is whether this -- this combination -- I can
13 ask very clearly whether he believes that all of the elements
14 in light of all the evidence that he has discussed discloses
15 each and element of that claim.

16 You know, and if that's the question, I don't see
17 how there could be an objection. He addresses that in his
18 report. He goes to the combination. All of that is covered,
19 Your Honor.

20 MR. CALDWELL: But I'm still connecting this dot on
21 the unit which is a construed term.

22 THE COURT: Ask a follow-up question.

23 And you can stand up and make your objection.
24 And we'll take our morning break and handle it outside the
25 presence of the jury.

1 MR. CALDWELL: Okay.

2 (Bench conference concluded.)

3 Q. (By Mr. Homrig) Let me -- let me return for a moment,
4 sir, to -- to Claim No. 12, okay?

5 A. Okay.

6 Q. In light of the prior art that you've discussed here
7 today, is it your opinion that one skilled in the art would
8 have thought that each and every element of that claim was
9 obvious at the time that we're looking at, the relevant time
10 period?

11 A. Yes.

12 MR. CALDWELL: Objection.

13 A. Would have been the testimony.

14 THE COURT: Go ahead, Mr. Caldwell.

15 MR. CALDWELL: Objection, Your Honor. That's the
16 reference we believe is outside the scope of the report.

17 THE COURT: All right. Ladies and Gentlemen of the
18 Jury, we're going to take our morning break at this time.

19 We'll be in recess probably for 20 minutes.

20 COURT SECURITY OFFICER: All rise.

21 (Jury out.)

22 THE WITNESS: Can I step down, Your Honor?

23 THE COURT: No. You stay there, please. Thank
24 you.

25 All right. Let's take up your objection,

1 Mr. Caldwell.

2 MR. CALDWELL: I'm sorry, Your Honor. I just --

3 THE COURT: Let's take up your objection.

4 MR. CALDWELL: Mr. Nelson is grabbing the report,
5 but our objection is that what they have done is circumvented
6 a hole in his report -- or they're attempting to circumvent a
7 hole in his report where there is no structure consistent
8 with the Court's claim construction that has been identified
9 for the designating unit. Therefore, the opinion is outside
10 the scope because he hasn't connected those dots.

11 THE COURT: Response.

12 MR. HOMRIG: Yes, Your Honor.

13 This is -- this is addressed. The overall opinions
14 are addressed in Paragraphs 322 of the invalidity report
15 where he discusses the Ericsson proposal and the apparatus
16 containing a processor. And goes on to describe it and its
17 functionality.

18 He discusses it in Paragraph 335 of his invalidity
19 expert report where he speaks about disclosing how the
20 processor and how the UE disclosed in the Ericsson proposal
21 performs the various steps that are incorporated, including
22 the monitoring and things in the flowcharts that were
23 incorporating the construction.

24 And in Paragraph 412, for example, he also
25 discusses the non -- you know, in the course of discussing

1 the non-transitory computable -- computer readable medium, he
2 talks about how it's -- it's a computer program configured to
3 control a processor to perform operations, how that user
4 equipment that's disclosed performs those steps, how one
5 skilled in the art would understand that this information was
6 disclosed. And he walks through sort of the functionality.

7 So he covers both the structure and in his opinions
8 the steps that are incorporated into the Court's
9 construction. All of that material is there in -- in those
10 particular paragraphs and then elsewhere.

11 MR. CURRY: Your Honor, not one of those paragraphs
12 does that. It describes the art at issue. It never links,
13 in the paragraphs that Mr. Homrig just referenced, the art,
14 the fact that it has a processor or whatever, to the Court's
15 claim construction in any, way, shape, or form.

16 The only paragraph where this is addressed relative
17 to the Ericsson proposal is Paragraph 354. And he says the
18 Ericsson proposal also discloses a designating unit as
19 construed by the Court. Conclusory statement, okay? And
20 then proceeds to say -- deal with this only about the
21 functional language.

22 There's never any reference in here to the uplink
23 capacity detecting unit or the format designating unit in
24 this paragraph relative to this. He talks about the
25 designating unit generally, which is the term he used in the

1 claim. Does not refer to the Court's claim construction,
2 does no structural analysis, whatsoever.

3 This was part of the Daubert motion that we -- that
4 we brought on this particular point because it's a complete
5 utter hole in his report. It is a defect. It does not link
6 any prior art to the structure identified by the Court in
7 that means-plus-function term.

8 MR. HOMRIG: Your Honor, in Paragraph 354, which
9 Mr. Nelson refers to, it does start out by saying that it
10 discloses the designating unit as construed by the Court; and
11 then it walks through how as previously discussed with
12 respect to various claim limitations, like claim limitation
13 No. 1(e), it walks through how Ericsson discloses the --
14 designating the long buffer status reporting format.

15 And it talks about the algorithm identified by the
16 Court in the '820 patent for performing the designating unit
17 function. It walks through how the same algorithm, you know,
18 is met there. And then it goes on and on and on to walk
19 through all of these parts.

20 So I think what -- what their criticism is, is it
21 seems like even though Dr. Acampora addressed the entire
22 scope, he called it out as applying the Court's construction,
23 he references back to his discussion because, of course, the
24 Court's construction incorporates those flowcharts that walk
25 through all of the limitations of the claims.

1 So, for example, one of those flowcharts covers
2 basically the steps in Claim 1. And so what he's doing by
3 referring back to his prior discussion is referencing that he
4 has already walked through the functions that that processor
5 performs and that UE performs.

6 And he's addressing it right here in 354, how that
7 applies, that overall analysis applies to the Court's
8 construction. It's right there. The Court, you know, denied
9 the Daubert. It did so for good reason. He has covered this
10 issue.

11 THE COURT: I don't -- I don't -- I think -- I
12 don't think they dispute that he does talk about the function
13 but that he doesn't point to any structure.

14 MR. HOMRIG: But he -- he does. I mean, he says:
15 The Ericsson proposal also requires user equipment on which
16 the method disclosed in the Ericsson proposal is implemented.

17 One of skill in the art would understand that the
18 Ericsson proposal at least inherently discloses software and
19 hardware for implementing the algorithm as the user equipment
20 necessarily must contain software and hardware to implement
21 the functionality disclosed in the Ericsson proposal.

22 So he says that and the Court's construction
23 requires software or hardware for performing these steps. He
24 has addressed that specifically, and he's told where to find
25 it and where he got there. It's all there.

1 THE COURT: Final word, Mr. Nelson.

2 MR. NELSON: He said it right there. He just said
3 that he's saying -- making some sort of inherency argument
4 here. There are two pieces of structure that are identified
5 by the Court explicitly. There is no analysis of those two
6 pieces of structure in any way, shape, or form. But for some
7 loose inherency argument, that -- that just doesn't hold
8 water. That's what the cases are that we cited in the
9 Daubert motion in the first place.

10 MR. HOMRIG: And he -- he explained on the stand
11 why one skilled in the art would understand the disclosure of
12 UE, which is user equipment, and how it would operate, what
13 they would have known at the time.

14 And the -- you know, that is -- that's all there.
15 So this isn't -- this isn't anything new, and it's not
16 anything that's an overreach, Your Honor. It's right there
17 in his report.

18 THE COURT: Okay. I'm going to overrule the
19 objection. Take it up on cross-examination. We'll be in
20 recess for ten more minutes.

21 MR. HOMRIG: Thank you.

22 COURT SECURITY OFFICER: All rise.

23 (Recess.)

24 (Jury out.)

25 THE COURT: Please be seated.

1 I just wanted to let you all know, Mr. Homrig, you
2 have used 11 hours and 24 minutes of your time so -- all
3 right?

4 MR. HOMRIG: Thank you, Your Honor.

5 THE COURT: Uh-huh. Let's bring -- get the rest of
6 the people, and we'll bring in the jury.

7 All right. Let's bring in the jury.

8 COURT SECURITY OFFICER: All rise for the jury.

9 (Jury in.)

10 THE COURT: Be seated.

11 You may continue, Mr. Homrig.

12 MR. HOMRIG: Thank you, Your Honor.

13 Q. (By Mr. Homrig) Dr. Acampora, before the break I was
14 asking you about Claim 12. And just in case the jury didn't
15 catch your answer, let me ask you again.

16 In your view in light of the evidence that you walked
17 through during your testimony today, do you have an opinion
18 on whether each and every element set forth in Claim 12 would
19 have been obvious to one skilled in the art?

20 A. I believe that it would have been, yes. That's my
21 opinion.

22 Q. And is it your opinion that as to each and every claim
23 that we've discussed today, all of these boxes are
24 appropriately checked off?

25 A. Yes.

1 Q. And is it your opinion that one skilled in the art would
2 have come not just in the individual elements but to the
3 combination of elements that is set forth in each of the
4 asserted claims?

5 A. Yes.

6 Q. All right, sir. So let's -- in the interest of time,
7 let me ask you this: In reaching your conclusions here, did
8 you consider commercial success related to the invention?

9 A. I did.

10 Q. Okay. Did you consider whether the accused products in
11 this case might be evidence of commercial success for the
12 alleged inventions set forth in any of these claims?

13 A. Okay. So it is my understanding that commercial success
14 would be an indication of non-obviousness, but it has to be
15 tied to the invention.

16 The iPhones have been commercially successful, but I see
17 no evidence -- I don't know of anyone that ever ran down to a
18 store and said, give me one of those new iPhones because of
19 its BSR format. So I don't think the commercial success has
20 anything to do with BSR.

21 Q. And then when you get to the BSR format, does the BSR
22 format, according to your analysis, used in the accused
23 products even perform any of the steps of any of the claims?

24 A. No.

25 Q. So could it be commercial success?

1 A. No.

2 Q. Okay. Now, let's turn to the LTE standard.

3 Sir, did you consider whether the LTE standard or LTE
4 generally could be commercial success for the alleged
5 inventions in any of the claims?

6 A. LTE is successful. There were many reasons it was
7 successful. I don't think the success has anything to do
8 with its use of its choice of BSR formats. In fact, we saw
9 this earlier. The actual selection of BSR format is one page
10 out of a page -- I think Dr. Caloyannides described it as
11 being hundreds of thousands of pages. I don't know if it was
12 that long, but there's lots of pages in the LTE. BSR --
13 selecting BSR formats is one.

14 Q. And then even if we look at selecting formats in LTE, in
15 your opinion, do -- do those steps practice each and every
16 element of any of the asserted claims?

17 A. No. No. That's been my testimony.

18 Q. So could it ever -- so could LTE ever be commercial
19 success for the asserted claims?

20 A. No.

21 Q. All right. So, sir, we are almost finished, but I have
22 just a few more questions for you, okay?

23 A. Sure.

24 Q. All right. Now, in the 2007-2008 time period, were
25 there other ways than the way set forth in the claims of the

1 asserted patent to select a BSR format besides -- actually,
2 let me -- let me withdraw that question and ask it slightly
3 differently so it will be -- so it will be clear.

4 In the 2007-2008 time period, were there other ways to
5 select a BSR format besides the alternative adopted by the
6 standard?

7 A. Sure.

8 Q. Can you give me an example of one such alternative?

9 A. Let me give you two. First of all, buffer status
10 reports were used in UFTS, have nothing to do with these
11 types of BSRs.

12 But another simple thing that could have been done is
13 always report a long BSR. The base station will certainly
14 have all of the information it needs to do its scheduling,
15 which is the purpose of a BSR. And it -- it wouldn't have
16 been any big deal.

17 Q. Now, sir, would using that kind of approach with the
18 standard, would that have made a material difference, in your
19 opinion, in how well cell phones worked?

20 A. I think cell phones would have worked -- it would be
21 indistinguishably different.

22 Q. All right. So let's -- let's just wind up here and
23 remind folks of your conclusions.

24 Now, as to the asserted claims in this case, what is
25 your opinion about infringement?

1 A. I believe that all of the asserted claims are infringed,
2 as I explained.

3 Q. Excuse me, sir. I think my question wasn't clear. I
4 was -- let me ask you about infringement.

5 In your opinion, are any of the asserted claims in this
6 case infringed by the accused products?

7 A. If I said something differently, none of the asserted
8 claims are infringed. That was my testimony.

9 Q. Okay.

10 A. I -- I showed two limitations weren't present. Every
11 limitation must be present. No asserted claim is infringed.

12 Thank you.

13 Q. You're welcome.

14 Now, let me ask you about obviousness. In your opinion,
15 is each and every asserted claim obvious in light of the
16 prior art you discussed?

17 A. Yes.

18 Q. All right. Thank you, sir.

19 MR. HOMRIG: I pass the witness.

20 THE COURT: Cross-examination?

21 MR. CALDWELL: Your Honor, may I have just one
22 moment to get organized?

23 THE COURT: Yes.

24 CROSS-EXAMINATION

25 BY MR. CALDWELL:

1 Q. Good morning.

2 A. Good morning, Mr. Caldwell.

3 Q. We have not met, have we, Mr. Acampora?

4 A. Not formally, no.

5 Q. All right. Well, pleasure to meet your -- make your
6 acquaintance.

7 A. Same here.

8 Q. Just because it's fresh on my mind, let me start with
9 something. Did you just say that an alternative solution to
10 the -- to the invention would be to just send long BSRs?

11 A. Yeah. When there's a need to send a BSR, send the BS --
12 the long BSR only. Yes.

13 Q. Isn't that what they did in 3G?

14 A. Not quite but essentially, yes.

15 Q. And did you do any testing or anything, whatsoever --

16 A. Let me correct that. 3G reported like a total amount of
17 the buffer, total amount of data stored. When I say "long
18 BSR," I mean the long BSR based upon four reports, how much
19 data is in each of the four buffers. That's different
20 than -- than 3G.

21 Q. Did you do any testing, whatsoever, to support what
22 you've just stated about how that would be indistinguishable
23 or something along those lines, from using the patented
24 invention?

25 A. Testing, no. But a mental analysis, yes.

1 Q. Okay. Did you quantify that mental analysis anywhere in
2 your report -- in your report?

3 A. It's not in my report, but I would be happy to do it now
4 if you would like me to.

5 Q. Okay. I'm just making sure. That's an opinion we've
6 heard for the first time today, right?

7 A. That's probably true. But you asked and -- did I do
8 anything and, yeah, I actually did.

9 Q. All right. And Apple's counsel asked you if it would
10 make a difference, right?

11 A. I'm sorry?

12 Q. Apple's counsel asked if it would make a difference to
13 just not send shorts and longs and instead only send longs?

14 A. That was the question that was asked. And it's my
15 opinion it would make insignificant difference.

16 Q. Do you remember in your deposition you were asked about
17 what is the problem being solved by the invention?

18 A. I was asked a lot. Maybe.

19 Q. You started that answer by going to the background of
20 the patent and referring to how the problem being solved was
21 addressing the inflexibility and inefficiency in not being
22 able to choose between different formats. Do you remember
23 that?

24 A. Well, I think I was using -- I was using that document,
25 and that's how it was characterized in the document. But I

1 don't disagree that we found that right on the face of
2 Googling the Ericsson proposal for that matter.

3 Standards bodies do a lot of things for a lot of
4 reasons. Sometimes it's very important. Sometime it's not
5 quite so important. I'm giving you my opinion. I don't
6 think this is a biggie.

7 Q. Mr. Acampora, you understand that we are on tight time
8 frames, right?

9 A. I suppose so, yeah.

10 Q. And do you realize my question was do you remember that,
11 discussing it in your deposition?

12 A. I remember some discussion about that, yeah.

13 Q. And I mean you no disrespect, but just for efficiency so
14 that we can get through our information with the jury in a
15 timely fashion, and then so that Apple's lawyer has a chance
16 to come back up here, will you do me a favor and try to stick
17 to the question that I ask you?

18 A. Yeah, as long as it -- as long as the answer that I give
19 is -- is adequate, if it's a truthful answer, sure.

20 Q. Do you remember referring to a problem being solved by
21 this invention as addressing the inflexibility and
22 inefficiency of prior systems where you couldn't change
23 between formats?

24 A. There was some discussion of that, yes.

25 Q. And is it your solution that the way to solve the

1 problem of inflexibly and inefficiently sending just one long
2 size is to just send one long size?

3 A. That's how it can be characterized in some of the prior
4 art, yes.

5 Q. Did you prepare your slides?

6 A. Pardon me?

7 Q. Did you prepare your slides?

8 A. What do you mean by "prepare"?

9 Q. Well, I mean, did you put the Apple logos on them and
10 all that?

11 A. Well, the content was all mine. I did not type them.

12 Q. Okay. And I won't belabor this point, but just so
13 everyone is clear, you are being compensated, correct?

14 A. Sure.

15 Q. And your rate is, I think, 725?

16 A. That's correct.

17 Q. Does that make you, I guess, the highest paid expert
18 that's here testifying?

19 A. I don't know.

20 Q. Okay, sir. You pretty much work for defendants, right?

21 A. I've -- pretty much so. Do you mean more often than
22 not? Yeah, I wouldn't disagree with that.

23 Q. And you don't ever put out a report acknowledging that
24 the patent asserted against them is valid or that the patent
25 asserted against them is infringed, right?

1 A. I don't recall having written such a report. That's
2 correct.

3 Q. We'll go back to this here for a minute; but just for
4 starters, do you -- were you here when Mr. Stattin testified?
5 I think it was last Friday morning?

6 A. I was.

7 Q. Now, do you agree that the joint proposal, which you
8 call the Ericsson proposal, does not tell you how to decide
9 between short and long formats?

10 A. I think it would be obvious, but it doesn't necessarily
11 tell you explicitly, yeah. But I don't think, based upon --
12 I think it would be pretty obvious.

13 Q. It doesn't say anything about a bandwidth check, does
14 it?

15 A. Well, I -- it doesn't say "bandwidth check" but I
16 gave -- it may not use the exact words but the concept was
17 there. It was my Goldilocks thing, not too hot, not too cold.
18 I explained that.

19 Q. The Alcatel proposal does not say make a bandwidth
20 check, does it?

21 A. The Alcatel proposal speaks about padding BSRs. So it's
22 quite clear what a -- what a padding BSR -- there is also a
23 concept called "piggybacking" well-known. That's what it's
24 talking about. You sort of piggyback something that you have
25 some space to do. That's what's -- that's what's being

1 disclosed.

2 Q. Okay. But I didn't ask you about piggybacking, and I
3 didn't ask you about padding. I asked you about bandwidth
4 checks, correct?

5 A. I'm applying the Court's claim construction, if you
6 will.

7 Q. My question to you is: The Alcatel proposal does not
8 tell you to do a bandwidth check, does it?

9 A. It does not explicitly use the word "bandwidth," but it
10 does speak about padding bits.

11 Q. I understand it speaks about padding bits. You keep
12 changing the question to padding bits, and I keep asking you
13 about bandwidth.

14 It doesn't tell you -- the Alcatel proposal does not
15 tell you to do a bandwidth check, does it, sir?

16 A. It does not use the word "bandwidth." I agree.

17 Q. And nor does Lee, correct?

18 A. That's also true.

19 Q. Do you remember what company the Lee reference was from?

20 A. I believe it was LG.

21 Q. It's the same LG that took a license to the patent
22 portfolio for, I think, (REDACTED BY COURT ORDER), something
23 like that. I can't --

24 MR. CALDWELL: I'm sorry. I probably should seal
25 the courtroom. I'm sorry, your Honor. Can I strike that

1 from the record?

2 THE COURT: You may --

3 Q. (By Mr. Caldwell) Is that the same company that took a
4 license to the patent portfolio for a substantial sum, sir?

5 A. Well, I do remember that LG took a proposal. I don't
6 remember anything about the sum.

7 Q. And you were in here, correct, when that -- when the
8 evidence was presented?

9 A. I was.

10 Q. I guess I'll try and walk through things sort of in the
11 order that you presented them.

12 One of the things you mentioned early on is you referred
13 to a Qualcomm baseband processor. Do you remember that?

14 A. I did.

15 Q. Is a baseband processor something -- a concept you're
16 familiar with?

17 A. Yes.

18 Q. Quite?

19 A. Quite.

20 Q. And that's a concept or terminology you've been familiar
21 with for a while in your career, would you say?

22 A. Yes.

23 Q. Now, were you mentioning baseband processor to suggest
24 that if there is any infringement, it's just in the Qualcomm
25 chip, it's not the Apple product? Is that the gist?

1 A. Well, I was mentioning baseband processor just to
2 illustrate the functionality that's on the baseband
3 processor. A very small part of that functionality is BSR
4 reporting. That's the reason I described it.

5 Q. Okay. Mr. Acampora, so you're not trying to suggest
6 that any infringement is Qualcomm's and not Apple's, are you?

7 A. I don't have any opinions on that. I'm sorry. But I
8 will say that it's -- the BSR -- everything we're talking
9 about is on that baseband -- is performed in the phone on
10 that baseband chip. That, I can -- that's a technical
11 opinion. That, I can testify to.

12 Q. And according to the law, which I believe you addressed
13 in your report, an act of infringement includes importing; am
14 I right?

15 A. That's my understanding, yes.

16 Q. And we know that it is Apple who imports the accused
17 devices from China, correct?

18 A. Well, let's say probably, but I -- again, I have no idea
19 who put it on the boat or the plane, who took -- I just don't
20 know. Who took it off when it arrived in Los Angeles, that's
21 not my expertise.

22 Q. All right. And I started this by asking if a baseband
23 processor is something that's known to you, right?

24 A. Yes.

25 Q. Does Apple manufacture baseband processors?

1 A. Not that I'm aware of.

2 Q. But you, at least, understand the question, correct?
3 It's just that you may not -- you're not aware of whether
4 they manufacture them, right?

5 A. I understand the question, yes.

6 Q. Do you remember what you said when we asked that
7 question in your deposition?

8 A. No.

9 Q. You were asked: To your knowledge, does Apple
10 manufacture any baseband processors?

11 And your answer was: Does Apple manufacture any
12 baseband processors? Tell me what you mean by "baseband
13 processor."

14 Do you recall that?

15 A. I do.

16 Q. And you've been here for the whole trial, except maybe
17 bathroom breaks and things like that, correct?

18 A. I know -- I was here for the entire trial. I missed a
19 brief portion of -- of Apple's -- of the damages expert -- of
20 Apple's damages expert.

21 Q. Well, you were here for Dr. Caloyannides's testimony,
22 right?

23 A. I was.

24 Q. You were here when he was cross-examined, and I believe
25 that was by Mr. Lumish?

1 A. I was.

2 Q. You also heard both Mr. Frappier from Apple and
3 Mr. Jones from CCE, correct?

4 A. I did.

5 Q. So that makes the four technical experts, right?

6 A. Yes.

7 Q. And would you say, at least conceptually, you have sort
8 of Frappier and Jones are the source code guys, and then you
9 have Acampora and Caloyannides that look to the source code
10 guys?

11 A. That -- that's certainly a good characterization, yeah.

12 Q. So your closest counterpart on the CCE side is
13 Dr. Caloyannides, correct?

14 A. That's -- that's my understanding, yes.

15 Dr. Caloyannides is offering opinions --

16 Q. And do you remember -- I'm sorry, I didn't mean to cut
17 you off.

18 A. Dr. -- I heard Dr. Caloyannides offer opinions on
19 infringement. I offered opinions on invalidity -- on
20 invalidity and noninfringement.

21 Q. Do you recall Mr. Lumish trying to establish with
22 Dr. Caloyannides that the main thing that mattered in this
23 case was the source code, at least for infringement?

24 A. Yes.

25 Q. Now, did you hear Mr. Lumish go after Dr. Caloyannides

1 repeatedly about, you can't tell me what this line of code
2 does, and you aren't able to answer questions about this
3 section of code?

4 Do you remember that?

5 A. I do.

6 Q. Did it seem a little unfair for Mr. Lumish to make that
7 attack on Dr. Caloyannides?

8 A. I'm sorry. Say it again.

9 Q. Did that seem a little unfair to you that Mr. Lumish was
10 making that attack on Dr. Caloyannides?

11 A. I don't -- I don't have an opinion on whether that is
12 fair or not fair. I saw a lot of things in this courtroom
13 that I -- that just from a personal point of view, not a
14 technical point of view, I thought was pretty unfair.

15 Q. Did it at least make you uncomfortable to watch a
16 cross-examination of Dr. Caloyannides questioning whether he
17 had a sufficient understanding of the code?

18 A. Did it make me uncomfortable?

19 Q. Yes, sir.

20 A. No.

21 Q. You didn't personally review any source code at all, did
22 you?

23 A. I don't read source code.

24 Q. So I'm --

25 A. That's not to say -- I looked at it, but it's not a

1 language I understand. I asked for that to be translated
2 into English.

3 Q. Would you agree with me, then, you relied on the code
4 review from Mr. Frappier?

5 A. Well, I relied on the code review from Mr. Frappier, but
6 also I had the -- at that point in time I also had the code
7 reviewed by Mr. Jones. I also had Dr. Caloyannides' opening
8 report on noninfringement. So I had more to go on.

9 Q. And which one of those two code experts gave a more
10 accurate recitation of how the code works?

11 A. I think that they were pretty much the same, except I
12 think that -- that Mr. Frappier provided a little bit more
13 context and a little better explanation of what's actually in
14 the code, not using flow diagrams but what is actually in the
15 code.

16 By the way, having sat through this here, I don't read
17 code. As far as a few lines of code regarding BSR reporting
18 in LTE, now I do. I saw a lot of that.

19 Q. And you understand that an "if" statement is a condition
20 in the code, correct?

21 A. That -- that, I do. Yes.

22 Q. And you understand that -- that the claims require a
23 plurality of pre-selected conditions, right?

24 A. Associated with the buffers. You're paraphrasing the
25 language of the claim.

1 Q. You didn't identify a single "if" statement for a single
2 piece of prior art, did you?

3 A. Well, no, but that's a different question.

4 Q. That is a different question. I'm asking, you didn't
5 identify a single "if" statement from a single piece of prior
6 art, did you?

7 A. That -- that is true.

8 Q. Do you dispute that the accused devices in this case
9 send long and short buffer status reports when operating in
10 an LTE environment?

11 A. Can you say that again? I'm not sure I even heard it.

12 Q. Is there any dispute -- do you disagree --

13 MR. CALDWELL: Let me strike that.

14 Q. (By Mr. Caldwell) Do you contend that the accused
15 products do not send long and short BSRs when operating in
16 LTE?

17 A. I do not dispute that.

18 Q. I mean, you've been working on this case for Apple for a
19 while, a couple of years maybe.

20 A. Couple of years, yes.

21 Q. When did you first realize that the accused products
22 send buffer status reports?

23 A. You mean pin it down with absolute certainty?

24 Q. Sure.

25 A. Probably when I saw Dr. Caloyannides' report and

1 Mr. Jones. I mean, with absolute certainty. Did I strongly
2 believe they did prior to then? Sure.

3 Q. You strongly believed that the devices sent BSRs prior
4 to that, correct?

5 A. Yes.

6 Q. In fact, you know that the LTE standard requires them
7 to, don't you?

8 A. Well, the only -- the standard simply describes what
9 must be done in the case of BSRs when certain conditions
10 arise. Now, if those conditions never arise, then they
11 wouldn't be sent. But, again, I would strongly believe that
12 the BSRs are being sent.

13 Q. What about when you power on your phone and it connects
14 with a cell station? Are there BSRs sent then?

15 A. As part of the initial -- the initialization?

16 Q. Well, as part of getting permission to actually use your
17 phone.

18 A. Actually, I'm not sure the first thing that happens has
19 anything to do with BSRs.

20 Q. I didn't ask if the first thing is sending BSR; what I'm
21 asking is part of getting associated with a cell, do you send
22 a BSR?

23 A. I don't know.

24 Q. Just cut to the chase. Was it your idea in April to
25 deny that Apple's accused products send buffer status

1 reports, in that request for admission we've seen a few
2 times?

3 A. Can you repeat that question, please?

4 Q. Yes, sir.

5 Was it your idea to deny that the Apple devices sent
6 buffer status reports, in that answer to the request for
7 admission that we've seen a couple of times?

8 A. Was it my idea? I don't think so.

9 Q. If you had been asked under oath in April whether the
10 Apple devices sent buffer status reports, would you have said
11 no?

12 A. Well, if I can give a very short two-part answer. As
13 claimed, no. At large, something that's called a BSR is
14 sent, probably.

15 Q. I'm actually working to make sure that we go through
16 things more efficiently, so I appreciate your patience.

17 Do you mind if I take down your boards here?

18 A. Be my guest.

19 Q. Actually, I'm going to come back to something, but I
20 just want to point out one thing real quick. Do you see this
21 tiny little line right here (indicating)?

22 A. Yes.

23 Q. Is that the way that appears in the claim, just sort of
24 as its own element: Wherein the designating unit is
25 configured to?

1 A. I'd have to look at the claim. I don't -- I just don't
2 recall. You asked me if it -- if the "designate," which
3 follows, appears on the same line as the "to"?

4 Q. Yes.

5 A. I'd have to look. I don't remember. I -- it very well
6 may.

7 Q. Do you think it very well may be an isolated element:
8 Wherein the designating unit is configured to?

9 A. The opposite.

10 Q. You think they very well may be combined?

11 A. Again, I'd have to look at the claim.

12 Q. Let me just ask it this way: Do you think there's any
13 chance, whatsoever, that in the claim "wherein the
14 designating unit is configured to" is a stand-alone element?

15 A. Is there any chance that it is? I -- again, if you just
16 show me the claim, how -- how it reads, I can -- we can cut
17 to the chase, and I'll let -- I'll let you know. I don't
18 know.

19 Q. I do not want to be accused of not showing you the
20 claim, so here is the claim. Hopefully slightly more
21 focused: Wherein the designating unit is configured to.

22 Does the element stop there, sir?

23 A. No. No. That's a run-on. I agree. So that's -- it's
24 the same as if the line hadn't ended with "to" and the
25 "designate" continued on that line.

1 Q. Sir, so when you look at the Court's construction, and
2 you look for the corresponding structure, the structure that
3 corresponds to the function for that term addresses:
4 Designating the long buffer status reporting format when
5 there is sufficient uplink bandwidth to communicate using the
6 long buffer status reporting format.

7 Correct?

8 A. That is correct. That's the function -- that's part of
9 the Court's claim construction, as I recall.

10 Q. And presenting that function and the structure that
11 performs it, is a more accurate way to represent the claim
12 than breaking them out separately, correct?

13 A. I'm sorry. I'm not sure I even understand the question.

14 Q. Mr. Acampora, do you remember drawing this?

15 A. I do.

16 Q. All right. And did you label it '820 patent up there?

17 A. I did.

18 Q. Was that your idea, to label that the '820 patent?

19 A. I was -- I believe I was asked does that represent -- I
20 don't recall exactly what I was asked. It might have been,
21 could you label that the '820 patent as a question, would
22 that be accurate to do so.

23 That, I -- I just don't remember the exact context, if I
24 was instructed to write it, if I was asked would that be
25 representative of and then wrote it. I -- I -- but I

1 certainly wrote it.

2 Q. Okay. Mr. Acampora, is there any part of the '820
3 patent that talks about having four diamonds and has short,
4 medium, long, and very long?

5 A. This is an illustration of what -- of steps that would
6 meet the claim limitations, not the only way to meet the
7 claim limitations. So is that specific way disclosed? No.
8 But did that meet limitations? Yes.

9 Q. Mr. Acampora, did you have trouble finding a graphic
10 that showed you the way to do a flowchart for the '820
11 patent?

12 A. I'm not sure I understand that question, either. There
13 were flow diagrams in -- in the patent itself; but I went
14 right to the claim, just like the proof of the pudding is in
15 the code, the proof of the pudding is in the claim.

16 Q. And when we look at that claim, that's where we're going
17 to find the four diamonds and the very long and the medium,
18 right?

19 A. I -- I never said that. I said -- but that is -- that's
20 just an example of what would be the claim limitations. The
21 claim requires two preset conditions corresponding to the
22 buffers, detecting a pre-selected condition and designating
23 long or short based upon the one you selected. That would
24 meet the limitation.

25 Now, I'm not saying that's the only way.

1 Q. Okay. Let's just focus on a simple question.

2 Can I look in the claim and find diamond No. 4 for the
3 very long BSR?

4 A. Probably not.

5 Q. In fact, when we look through the intrinsic record,
6 there's already been a handy-dandy diagram drawn for us,
7 correct?

8 A. I remember this -- this drawing.

9 Q. Mr. Sebire presented this drawing to the jury, didn't
10 he?

11 A. He did. But I believe that was in one of the -- that
12 was in an early application.

13 Q. So you made this argument to the jury or presented this
14 position to the jury that the accused products don't have the
15 plurality of pre-selected conditions, right?

16 A. That's my opinion, yes.

17 Q. And now am I correct that there is no dispute that an
18 "if" statement reflects the condition?

19 A. In general, an "if" statement -- an "if" statement is
20 posing a question. Look -- it's condition nexus. Look for
21 this condition. And if you find it, do something.

22 Otherwise, do something different.

23 Q. Well, perhaps, something we can agree on -- you, me, and
24 Mr. Frappier -- he was asked and also referred to an "if"
25 statement: What's that?

1 And his answer -- at trial -- was: It's a -- it's a
2 particular kind of statement that is used for testing
3 conditions.

4 Do you recall that?

5 A. I -- I do.

6 Q. And do you agree with it?

7 A. I would agree with that.

8 Q. Am I correct -- let's just talk about regular and
9 periodic BSRs, okay?

10 A. Okay.

11 Q. And it's your position that you do not check two
12 pre-selected conditions before you determine -- before you
13 send your regular or periodic BSR; is that correct?

14 A. Well, you don't select -- you don't test two conditions
15 upon the detection of one of which would cause you to
16 designate a buffer status reporting format. That's my
17 opinion.

18 Q. What the code does -- and I guess I don't know what's
19 going to rise to the level of causing someone sensitivity.
20 I'm trying to talk at an abstract level, but I'm afraid
21 someone's going to be mad at me about the code, so...

22 MR. CALDWELL: Regretfully, may we seal the court,
23 Your Honor?

24 THE COURT: Let's leave the courtroom if you're not
25 covered under the Court's protective order at this time.

1 Mr. Caldwell, as soon as you think we can unseal
2 it, let me know.

3 (Courtroom sealed.)

4 (This portion of the transcript is sealed and filed
5 under separate cover as Sealed Portion No. 17.)

6 (Courtroom unsealed.)

7 Q. (By Mr. Caldwell) So the point I think we agree on is
8 the mere fact that someone is -- sorry -- the mere fact that
9 something is prior art does not mean it invalidates the
10 claims. Fair?

11 A. It only means that it appeared and was available to the
12 public earlier. That's my understanding.

13 Q. And, in fact, there are lots of things that are prior
14 art, just generally speaking, correct?

15 A. I suppose so.

16 Q. Like the 2G cellular networks, those are prior art,
17 right?

18 A. I suppose so. The only thing I'm hesitant about is are
19 we talking about prior art in a relevant field, any
20 publication like Einstein's theory of relativity? I mean,
21 that's all prior art. Or are we focusing on this particular
22 topic?

23 Q. I'm not -- does it actually matter for the answer to my
24 question of whether 2G is prior art?

25 A. That's what I -- that's -- that's my -- when you speak

1 of prior art, the first thing that comes to my mind is it was
2 published earlier. In the relevant topic, not in the
3 relevant topic, doesn't matter. It just happened earlier. I
4 agree with that, if that's what you were asking.

5 Q. Yeah. So things like 2G and 3G, they happened earlier,
6 right?

7 A. Sure.

8 Q. And then people work hard to develop the next standard,
9 correct?

10 A. I won't comment on that in terms of how hard people work
11 to develop a standard.

12 Q. You don't partnership in 3GPP, do you, sir?

13 A. Not directly.

14 Q. Now, you are not contending in this trial that any one
15 of those references discloses all elements of any claim,
16 right?

17 A. The references being Ericsson, Lee, and Alcatel?

18 Q. Yes, sir.

19 You have not contended that any one of those references
20 discloses all elements of the claims. That was not part of
21 your presentation, correct?

22 A. My -- my opinion is based upon a combination of the
23 three.

24 Q. If -- if the opinion were that one reference disclosed
25 all elements of the claim, that's a separate analysis called

1 "anticipation," right?

2 A. Well, or single reference obviousness.

3 Q. And in this case you're not making -- you're not making
4 the anticipation presentation. You're saying that when you
5 look at the combination of these things, it renders the
6 claims obvious, in your view, right?

7 A. The opinion that I presented on invalidity is based upon
8 the combination of the three references. That's true.

9 Q. Did you take into account that LG, the folks who
10 submitted Lee, Alcatel, the folks who submitted the Alcatel
11 proposal, and all the companies listed on the joint proposal,
12 were all working in the working group?

13 A. As one indication -- well, putting Lee aside because I
14 don't know if Lee was in the working group, but certainly the
15 contributors to the Ericsson proposal and Alcatel, I believe
16 they were all working on -- in the same working group,
17 addressing the same issue of selecting buffer status report
18 format. And to me, that's one of the reasons that it would
19 be apparent to do a combination of what's being -- of what's
20 being taught here. This is -- this is all known, people all
21 working on the same issue.

22 Q. Despite LG, Alcatel, Ericsson, Nokia, Nokia Siemens, NTT
23 DoCoMo, Samsung, despite all of them being in this RAN2
24 Working Group, they did not jointly come up with and publish
25 and include into the standard all of the elements of the

1 claim, right?

2 A. Well, I don't think anyone put all of the elements of
3 the claim into the standard, if that was part of your
4 question. In terms of whether anyone -- any one or a number
5 of participants came up with the idea of the patent, or
6 the -- the steps of the patent, that I would have a different
7 opinion on.

8 Q. Did you address the fact -- in your obviousness
9 analysis, did you address the fact of how the group responded
10 when Mr. Sebire presented his proposal R2-080015?

11 A. Which proposal are you talking about? I don't -- that
12 number was just a bunch of numbers.

13 Q. Do you remember that after the joint proposal, the one
14 that you've shown us, Mr. Sebire presented to the same group
15 a separate proposal about criteria for selecting long versus
16 short BSRs, and that's the one that was numbered 080015?

17 A. I remember that Mr. Sebire testified as to another
18 submission, but I couldn't tell you it was that number or
19 that the contents were as you represented them to be.

20 Q. And all those companies -- Alcatel, LG, Ericsson, Nokia,
21 NTT DoCoMo -- they were all represented at the meeting where
22 Mr. Sebire presented R2-080015, correct?

23 A. I'd have to look at the list of attendees, but let me
24 accept that, that they -- that they were there. They had
25 been involved in the meetings, and a lot of these ideas had

1 been discussed over quite some period of time.

2 Q. Prior to this lawsuit, are you aware of any of those
3 companies contending that Mr. Sebire's idea was obvious to
4 them?

5 A. I'm not aware of that having happened. That's correct.

6 Q. And, in fact, the evidence in this case has shown that
7 it was an unanswered question how to decide between different
8 formats of BSRs, correct?

9 A. No.

10 Q. You disagree with that?

11 A. I disagree with that.

12 Q. We saw a presentation that was shown by -- well, you
13 heard the testimony of Mr. Stattin, correct?

14 A. I was here, yes.

15 Q. And he even says that in the joint proposal -- which is
16 the latest of the three references that you've shown,
17 correct?

18 A. Yes.

19 Q. The joint proposal does not tell you how to decide when
20 to send one format versus the other, correct?

21 A. I don't know about that.

22 Q. Did you review his deposition transcript that was taken
23 a long time ago?

24 A. How long ago?

25 Q. Well, I mean, it was taken in June, I think.

1 A. I'd have to look at my list of material that I
2 considered. But I believe that I did look at it at some
3 point in time. I'm just not sure when that was, relative to
4 when I prepared the reports and -- yeah. I'm just not sure.

5 Q. And do you remember that when you look in the joint
6 proposal, it's -- when you get to Proposal 6, that's the one
7 that has a drawing for the -- a short BSR and a long BSR?

8 A. Yes.

9 Q. Who drew those drawings?

10 A. Okay. So my recollection -- by the way, more recently a
11 bunch of slides were produced, which I did look at. These --
12 those slides were actually used -- I've seen some of the
13 slides used here in court.

14 So you're asking me who drew the long and short BSR
15 format?

16 Q. That are in the documents --

17 A. That are in the Ericsson proposal?

18 Q. Who drew the long and short format that are in the
19 document you call the Ericsson proposal?

20 A. In terms of actually drawing it or recapturing a group
21 discussion?

22 The second -- the first, who drew it, I -- that might
23 have been Mr. Sebire, since he sort of described everything
24 on his way home after the meeting when a whole bunch of
25 things were discussed.

1 Q. Do you remember -- I've asked you about Proposal 6.

2 That's where the long and short are, correct?

3 A. Yes.

4 Q. Do you remember Mr. Stattin testifying under oath that
5 that Proposal 6 does not say -- does not say under which
6 conditions we use them? It merely had proposed that there
7 are two types and two formats?

8 A. I do remember his testimony to that effect. But I think
9 that was in the context of whether it was decided how that
10 would be done, not in the context of whether there had been
11 some discussion of what conditions might apply and when. But
12 no decision was made. That's -- that's what I do recall.

13 Q. My question is specifically, do you agree that
14 Mr. Stattin testified Proposal 6 does not say under which
15 conditions we use them; it merely had proposed that there are
16 two types and two formats? Do -- so you agree -- do you
17 realize he said that?

18 A. I think that is what he said, and I don't -- I wouldn't
19 disagree with that. That's -- that's all Proposal 6 says.

20 That does not mean there wasn't some discussion on the
21 subject.

22 Q. And, sir, you are absolutely positively not a fact
23 witness to any alleged discussions you're alluding to right
24 now, right?

25 A. That's for sure.

1 Q. You can't tell us what anyone said, and you're not
2 trying to, are you?

3 A. I was not present. What I -- what I can do is rely on
4 testimony that I heard and I did hear -- I heard what was
5 said. So did the jury.

6 Q. Sir, I'm not trying to fuss at you, but I don't -- I'm
7 not interested in getting some off-the-cuff opinion that you
8 haven't issued before. Correct? You -- so when I'm
9 asking --

10 A. It depends what question you ask. I'm sorry.

11 Q. No. My question was, you're not a fact witness. I was
12 trying to focus directly on that and you went around --

13 A. I said for sure. I'm an expert witness. I'm not a fact
14 witness. I wasn't present. That's true.

15 Q. We established earlier, I believe, that you've not
16 identified two "if" statements in any of the references you
17 present for obviousness, correct?

18 A. Not written as "if" statements. That's true.

19 Q. And you've also not identified anywhere in your
20 presentation a place where after a plurality of pre-selected
21 conditions are checked, that there is then a check for
22 sufficient space in the uplink grant, correct?

23 A. Ask that question again, please.

24 Q. Yes, sir.

25 A. I -- I don't know if that's correct.

1 Q. You did not identify in your presentation a place where
2 a plurality of conditions are checked, and then subsequently
3 a check for the sufficiency of space in the uplink grant is
4 performed, correct?

5 A. The words or the concept? The concept, yes; the words,
6 no.

7 Q. So there was not a place you identified in any of those
8 references where after two checks, you check your space in an
9 uplink grant. It -- whether it says exactly check the space
10 in your uplink grant or not, you didn't point to that in
11 those references, correct?

12 A. Again, I -- I don't think that's correct. I believe I
13 pointed to two -- two places, one in the Ericsson document
14 and one in the Alcatel document.

15 Now, again, the words might not have been the same, but
16 to this person of ordinary skill looking at what was
17 disclosed, comparing it to the language that you just gave
18 me, one would recognize it's the same thing. You could say
19 the same thing different ways, but it means the same thing.

20 Q. In the claims you first try to determine, for example,
21 whether you want to send a long or short, based on
22 conditions. Fair?

23 A. You detect one of a plurality of conditions and use that
24 to designate a format. A format could be -- could be a long
25 and short -- a long or a short. It would depend on what

1 condition you checked.

2 Q. And then after that, you check the bandwidth or you
3 check the -- whether there's sufficient space in the uplink
4 grant, right?

5 A. Sufficient space in the uplink grant to send a long.

6 Q. After you've made a preference for long versus short,
7 you check whether there's sufficient space for the long,
8 correct?

9 A. That's correct.

10 Q. And you didn't point to a place where the references
11 make a decision of short or long and afterwards make a check
12 whether there's sufficient space for a long, correct?

13 A. Not correct. Is it -- again, are you asking do I see
14 the concept there or do I see the words "check sufficiency of
15 grant"? The words were not there. The concept, that I would
16 disagree.

17 Q. Do you remember talking about Claim 10?

18 A. I do.

19 Q. You've rendered an opinion to this jury that you believe
20 Claim 10 is invalid, and you think there's clear and
21 convincing evidence supporting that, right?

22 A. I do.

23 Q. Do you remember what you said about the meaning of
24 Claim 10 in your deposition?

25 A. The exact language? No.

1 Q. Would it surprise you if you said: I'm not actually
2 sure what that claim means?

3 A. That's a strange claim. I could provide interpretation
4 to what it means, which I just did in my testimony here
5 today. That is a strange claim deriving from Claim 1.

6 Is that referring to what you would do if you failed the
7 second designating step? Does it refer to what you would do
8 if you passed the second designating step -- the designating
9 being checking -- the second step being is there enough
10 space?

11 Claim 1 ends with a check -- with -- with an
12 instruction: Send the long if there's sufficient space.
13 It says nothing about what to do if there's insufficient
14 space.

15 So because of that, it's not quite clear what Claim 10
16 is referring to. But in either event, I think that what I
17 found in the prior art disclosed Claim -- Claim 10 no matter
18 how you interpret it.

19 Q. Mr. Acampora, respectfully, will you please try to limit
20 your answers to my questions? I have no problems with the
21 redirect if they want to use their time. But you understand
22 we're pressed for time? Do you understand that?

23 A. You've -- you've told me that, yes.

24 Q. In your deposition you said you're not sure what that
25 claim means. Do you dispute that? Do you dispute that you

1 said that in your deposition?

2 A. I would not dispute that.

3 Q. The one thing you're clear about, you don't know what it
4 means --

5 A. I don't know the context, but I wouldn't dispute that.

6 Q. Okay. You don't know what the claim means, but you're
7 darn sure that it's not infringed and it's invalid under
8 clear and convincing evidence; is that fair?

9 A. For the reason that I just explained, under either
10 interpretation, I think that it's found in prior art.

11 Q. Now, the best and brightest minds sat around in these
12 3GPP meetings and were talking about -- I'm sorry. You're
13 smiling. Let me just stop my question. You don't agree that
14 these were smart folks that --

15 A. Oh, you said the best and the brightest. I -- a bunch
16 of knowledgeable people sat around and -- and pondered what
17 direction the standard should take. That, I don't disagree
18 with.

19 Q. Well, would you agree with me that the folks working on
20 the 36.321 spec are pretty darn experienced at buffer status
21 reports?

22 A. Sure.

23 Q. I mean, more than you would have been coming into the
24 case, right?

25 A. That's probably true.

1 Q. Probably by leaps and bounds, right?

2 A. I don't know about that. The reason -- the reason I say
3 that, there's not much there. There's just not much to
4 understand.

5 Q. You understand that Claim 10 further limits the claim
6 from which it depends, which is Claim 1, right?

7 A. Yes.

8 Q. And LG was participating in these meetings, right?

9 A. I think so. I think so.

10 Q. But you didn't check into that?

11 A. I didn't specifically check to see whether LG was
12 participating.

13 Q. Alcatel was participating in these meetings for sure,
14 right?

15 A. Alcatel was participating. They submitted a proposal.
16 I relied on that proposal.

17 Q. I mean, Ericsson was participating?

18 A. Yes.

19 Q. Nokia?

20 A. Yes.

21 Q. NSN?

22 A. Yes.

23 Q. But that's not all of the people that were there, right?

24 A. More people were there.

25 Q. A lot more people there, right?

1 A. I don't know how many, but I would assume there were
2 more people present, yes.

3 Q. I mean, other big companies --

4 A. And there might have been multiple people from each of
5 those companies.

6 Q. And your -- your suggestion today to the -- to the jury
7 is that you've stepped back into that time frame, looked at
8 the claims, looked at what was known to LG and Alcatel and
9 the joint proposal folks, and you've decided that the claims
10 which have been issued by the U.S. Patent Office are obvious
11 and, therefore, invalid, right?

12 A. There's not much there. Yes.

13 Q. Do you think that from what folks in the working group
14 knew and from reading the joint proposal, that Claim 10 would
15 be obvious?

16 A. I think they would, for the reasons that I do.

17 Q. You have an advantage over those folks back then, don't
18 you?

19 A. What's that?

20 Q. Well, you get to look at Mr. Sebire's patent claims,
21 right?

22 A. Well, I looked at his claims. I'm not sure that would
23 be my advantage.

24 Q. Well, you got to look at his claims and go back and look
25 for those parts in the prior art, didn't you?

1 A. Okay. I think I understand your question.

2 So I was aware of what was in the claim, and I looked at
3 a bunch of prior art to see if prior art has what's in the
4 claim. And some of the art I looked at did not; and some
5 that I looked at did. Is that what you mean by "advantage"?

6 Q. You get to actually look at the claim and use that as
7 sort of a plan or a roadmap for what to find in the prior
8 art, correct?

9 A. The only -- only, sir, as you put it, prior art could be
10 all over the map. I used the claims as a guide to what I
11 should be looking at.

12 Q. You used the claim as a guide to the art you should look
13 at, right?

14 That's what you just said?

15 A. Well, I wouldn't look at Einstein's theory of relativity
16 for this claim. True.

17 Q. Well, I'm not trying to make a joke about it. I
18 understand --

19 A. I'm -- I'm not sure I understand your question. I -- I
20 looked at the claim. I looked at the prior art. I -- I had
21 an idea of what I was assessing, does the art disclose the
22 limitations. So, yeah, sure.

23 Q. Mr. Acampora, I actually repeated back your answer to
24 me, and that's the thing you're telling me you don't
25 understand. Are you with me?

1 A. No.

2 Q. Okay.

3 A. I'm sorry. I'm not.

4 Q. You said you looked at the patent claim as a guide for
5 the prior art, and I'm -- I'm just making sure that I didn't
6 misunderstand what you said. I may have missed a word, but I
7 think that's what you said.

8 A. Yeah. So I wasn't looking at the wrong art.

9 Q. Do you understand that in your position when you're
10 hired, compensated to go back and grab prior art and piece it
11 together, that you're not allowed to use hindsight to make
12 out an obviousness case? Do you understand that?

13 A. Sure.

14 Q. Did you look to see what the companies in the
15 meetings -- this would be after Lee, after Alcatel, and when
16 the joint proposal, the last one -- when that proposal was
17 discussed, did you look to see in the public records what the
18 companies said about it?

19 A. What the company said about what? The --

20 Q. The contents of the joint proposal.

21 A. I -- I didn't search the public records to see what they
22 said, if that's what you're asking. No.

23 Q. Well, right now we have -- in 2016, we have Dr. Acampora
24 looking back to 2007-2008. But there are actually minutes of
25 meetings that these companies had in 2007 and 2008 about the

1 proposal, right?

2 A. I believe there were minutes.

3 Q. And did you go look to see what the companies were
4 actually saying?

5 A. I did not go to look to see what the companies said, no.

6 Q. Is it your view that it's clear by the time the third
7 reference was being presented, the joint proposal, what you
8 used to select which radio bearer group you would send
9 pursuant to Claim 10?

10 A. You mentioned the third something, and you referred to
11 it as being the joint proposal. Can you be specific? I want
12 to make sure I understand exactly what document you're
13 referring to.

14 Q. I'm just looking at your timeline. And there was LG,
15 Alcatel, and the last one was the joint -- the last one in
16 time --

17 A. Last one in time, okay.

18 Q. -- was --

19 A. The one that was closest to the actual application of
20 the '820?

21 Q. Yes.

22 A. The Ericsson proposal, okay.

23 Q. Well --

24 A. The joint proposal.

25 Q. "Joint proposal" is more accurate, right?

1 A. Okay. Sure.

2 Q. Did you look to see what the participants in the meeting
3 said when the joint proposal was discussed?

4 A. Did I overtly go to look for that? No. I was basically
5 given a set of prior art, which I pored over some that was
6 rejected and not. What you're referring to was actually made
7 available, as I understand it, very recently, as recently as
8 maybe a week and a half ago.

9 Q. Sir, the 3GPP website was available long before you
10 prepared your report, right?

11 A. I did not go search the 3G website. That, I -- I
12 concede. I did not go search the 3GPP website.

13 Q. Now, would it surprise you -- I'll start over.

14 Have you ever heard of Panasonic? Have you ever heard
15 of Panasonic?

16 A. I've heard of Panasonic, yes.

17 Q. Part -- right -- a gigantic electronics company?

18 A. I believe it's adequately -- it -- it made the brand
19 name, yes.

20 Q. And they partnership in 3GPP meetings, right?

21 A. I don't know that for sure, but I wouldn't be surprised
22 if they did.

23 Q. Would it surprise you that even after, well after the
24 Lee application, well after an Alcatel proposal, and even
25 after the joint proposal was submitted, that Panasonic was

1 still asking, well, how -- if we can only fit one buffer in a
2 BSR, how are we going to decide which one? Would that
3 surprise you?

4 A. I don't know if I would be surprised by that or not. I
5 also don't know if it happened or not. I -- but I would not
6 be surprised one way or the other.

7 Q. And do you have any idea who would have answered that
8 question in that meeting?

9 A. I don't know if the question was asked or answered
10 but -- no. I -- I don't know what transpired in the meeting.
11 I was not there.

12 Q. It's Apple's burden to prove invalidity in this case and
13 take away the patent, right?

14 A. Well, leave out that second part. My understanding is
15 it's Apple's burden to prove that the patent is invalid.
16 What happens beyond that, I have no idea.

17 Q. And you didn't even go look at what the industry said in
18 response to these proposals that you cited as your prior art
19 references?

20 A. I did not.

21 MR. CALDWELL: I'll pass the witness.

22 A. Nor would I need to. I formed my opinions based on what
23 I saw, and this is inclusive of the claims.

24 MR. CALDWELL: I'll pass the witness.

25 THE COURT: All right. Ladies and Gentlemen, we're

1 going to take our lunch break. I'm sorry, we went a little
2 long today. We're going to be in recess until 1:45.

3 COURT SECURITY OFFICER: All rise.

4 (Jury out.)

5 THE COURT: A few announcements. I have criminal
6 court at 1:00 o'clock, so I don't need you to totally vacate
7 the place, just make room for my criminal attorneys to sit
8 here at counsel table.

9 Your trial times, Plaintiff has used 11 hours and
10 37 minutes. Defendant has used 11 hours and 28 minutes.

11 And we're going to get you the charge at the end of
12 the lunch break, okay?

13 We'll be in recess until 1:45.

14 COURT SECURITY OFFICER: All rise.

15 (Recess.)
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CERTIFICATION

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of our abilities.

/s/_____
CHRISTINA BICKHAM, CRR, RMR
Official Court Reporter

September 13, 2016

/s/_____
SHEA SLOAN, CSR, RPR
Official Court Reporter